SUPREME COURT OF THE UNITED STATES.

No. 260.

JOHN B. McCLANE, PLAINTIFF IN ERROR,

vs.

JOHN D. BOON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

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1 In the circuit court of the State of Oregon for the county of Marion, in chancery sitting.

JOHN D. BOON, complainant,
vs.
JOHN B. MCLANE, defendant.

To the circuit court of the State of Oregon for the county of Marion:

The bill of the complainant shows to the court that he, the said complainant, on the 23d day of June, 1853, was a white settler on the public lands in Oregon, and that he was a resident thereof on and before the first day of December, 1850, and above the age of eighteen years on the 1st day of December, 1850; that he is a native-born citizen of the United States, and that he was on the said 23d day of June, 1853, a married man, and that he was legally married to Martha J. Boon, his wife, on the 9th day of January, 1839. And he further says that on the 23d day of June, 1853, he personally commenced to reside and cultivate that part of the public land particularly described as follows: The northwest quarter of section 23, and the northwest quarter of the southwest quarter of sec. 23, and the northeast quarter of
2 the southeast quarter of section 22, and the south half of the south half of the southeast quarter of section 15, and the south half of the south half of the southwest quarter of section 14; and the south half of the southeast quarter of section 14; all of the said land lying and being in township No. seven (7) south, of range No. (3) three west of the Willamette meridian, in Marion County, State of Oregon, which said parts of sections 14, 15, 22, and 23 were at that time made fractional by the claims of older settlers claiming under the donation act of Congress, passed September 27th, 1850, to wit, Samuel Pentor, David Pressley, Josiah L. Parrish, and William H. Wilson, and whose claim lines were undefined, and upon the determination of said older claims and the establishing of the lines thereof, as appears from the maps and surveys of the United States in the land office of Oregon. The said lands claimed by plaintiff are more particularly described and designated thus: Beginning at a point on the bank of the Willamette River, 22 chains west and 6.40 chains north of the corner of sections 14, 15, 22, and 23; thence east 66.54 chains; thence S. 19° W., 41.27 chains; thence N. 71° W., 16.90 chains; thence S. 19° W., 19.28 chains; thence S. 17° 30′ E., 7.60 chains; thence S. 19° W., 12.00 chains; thence N. 59° 30′ W., 32.60 chains; thence N. 8° 30′ W., 8.58 chains; thence N. 49° W., 17.00 chains, with meanderings as follows: N. 12° E., 3.60 chains; thence N. 17° 30′, 9.00 chains; thence N. 25° E., 5.00 chains; thence north
3.60 chains; thence N. 15° E., 3.10 chains; thence N. 12° E., 6.50
3 chains, to the place of beginning, containing 298.59 acres, being the same land described and contained in the patent of defendant, hereinafter referred to.

And complainant further says that within three months after the commencement of the said residence and cultivation, to wit, on the 20th day of September, 1853, he notified the surveyor general of Oregon that the said described tract of land was claimed by him as a donation under the act of Congress passed 27th September, 1850, entitled "An act creating the office of surveyor general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands;" that on the 29th day of November, 1853, within twelve months from the time *from the time* the said settlement was commenced, he, the said complainant, proved to the satisfaction of the surveyor general of Oregon, by two witnesses, that the settlement and cultivation required by the said act of Congress had been commenced, specifying the time of commencement.

And complainant further says that he personally resided upon and cultivated the said described tract of land continuously from the said 23d day of June, 1853, to the 23d day of June, 1857, and that on the said 23d day of June, 1857, he proved to the satisfaction of the surveyor general of Oregon, by two disinterested witnesses, the fact of such continued residence and cultivation for four consecutive years from the 23d day of June, 1853, and that the said surveyor general afterwards designated the south half of the said described tract of land as the part enuring to complainant, and the north half thereof as the part enuring to the wife of complainant; and com-
4 plainant says that he has in all respects complied with the provisions of the said act of Congress so as to entitle him to the said described tract of land.

And complainant further says that the said tract of land as claimed by him was on the 23d day of June, 1853, vacant public land of the United States, having been made vacant by the voluntary abandonment of the former claimant, John B. McClane, the defendant in this suit, he having ceased to reside upon and cultivate the said land on or about the 26th day of March, 1853, and that the said defendant had not at the time he so voluntary abandoned the said claim, as complainant is informed and believes, resided upon and cultivated the same as required for four consecutive years at any time previous to such abandonment. Complainant further says that the said defendant, in order to obtain a title to the said land, after having resided upon said claim only about one year and nine months continuously, as required by said act, prior to the time of such abandonment, made a statement under oath, and produced before the surveyor general of Oregon the affidavits of William H. Wilson and Josiah L. Parrish, to the effect that he, the said defendant, had personally resided on and cultivated the said tract of land for more than four years continuously prior to the 26th day of February, 1852.

And complainant further says that the statement made under oath by the defendant before the surveyor general of Oregon and the said affidavits made by the said witnesses Wilson and Parrish, and filed with the said surveyor general of Oregon, to the effect that the said defendant had resided upon and cultivated the said tract of land continuously for more than four years, were false in that respect; and that afterwards, to wit, on the 22nd day of September, 1853, after said abandonment, Josiah L. Parrish, one of the said witnesses, filed another affidavit with the said surveyor gen-
5 eral of Oregon, in which he retracted and modified the first affidavit made by him so as to show conclusively that the said defendant had not resided upon and cultivated the said tract of land for four years continuously prior to that time; and plaintiff says there were no witnesses other than the said Wilson and Parrish, as he is informed and believes, by whom the said defendant proved four years' residence and cultivation upon the said tract of land; and that on the 17th day of May, 1854, John Wilson, the Commissioner of the General Land Office of the United States, at Washington City, notified the surveyor general of Oregon that there were valid objections to the issuing of a patent to the said defendant, because he had not resided upon the said tract four years continuously, as required by law.

And the complainant further says that afterwards, in the case of conflict between the complainant and the said defendant respecting the right to the said tract of land, before the Commissioner of the General Land Office, at Washington City, the said defendant wrongfully and fraudulently produced before the said Commissioner and used the said false affidavits of the said Wilson and Parrish, representing that he, the said defendant, had resided upon and cultivated the said tract of land for four continuous years, when in truth and in fact he had never resided thereon and cultivated the same four years continuously, as complainant is informed and believes. And com-

plainant says that no proceedings were ever had, or decision made, or judgment rendered by the surveyor general of Oregon, or any register and receiver, in reference to the conflict or question between comp. and def't as to said land. And complainant says that by means of the said false affidavits,
6 as he is informed and believes, the said Commissioner was induced to believe that said defendant was entitled to the said tract of land; and that on the 18th day of December, 1860, the said Commissioner accordingly issued a patent to the said defendant and his wife for the following described tract of land, to wit: (T. 7 S., R. 3 W.) beginning at a point on the bank of the Willamette River, 22.00 chains west and 6.40 chains north of section corners of 14, 15, 22, and 23; thence east 66.54 chains; thence S. 19° W., 41.22 chains; thence N. 71° W., 16.90 chains; thence S. 19° W., 19.78 chains; thence S. 70° 30′ E., 7.60 chains; thence S. 19° W., 12.10 chains; thence N. 59° 30′ W., 32.60 chains; thence N. 8° 30′ W., 8.58 chains; thence N. 49° W., 17.00 chains, with meanderings as follows: N. 12° E., 3.60 chains; thence N. 17° 30′ E., 9.00 chains; thence N. 25° E., 5.00 chains; thence north 3.60 chains; thence N. 15° E., 3 10 chains; thence N. 12° E., 6.50 chains, to the place of beginning, containing 298.59 acres, the south half of the said described tract to the said defendant and the north half thereof to the wife of defendant.

And complainant further says that at the March term, 1861, of the circuit court of the State of Oregon for the county of Marion, the said defendant, John B. McClane, commenced an action at law against the complainant to recover the possession from complainant of the south half of the said last described tract of land, and damages for the detention thereof, which action is now pending in the circuit court of the State of Oregon for Clackamas County, on a change of venue from Marion County; and that if the said John B. McClane be suffered to proceed in the said action at law as he now threatens and intends to do, this complainant will suffer great loss and damage in his just right to the said described land. Complainant further says that he has no adequate remedy at law to protect him in his just rights in regard to the said described land.

Wherefore he prays a temporary injunction may be issued by the circuit court or a judge thereof to restrain the said defendant, John B. McClane, from all further prosecution of the said action at law, and that all proceedings at law
7 in the said action may be stayed until the final determination of this suit, and that upon the final hearing thereof this court will perpetually enjoin the said defendant, John B McClane, from all proceedings in said action; and further, that this court will decree that the said defendant, John B. McClane, holds the said south half of the said last described tract of land as a trustee for this complainant, and that this court will decree that said south half of said last described tract be conveyed by the said defendant to complainant for his costs of suit, &c., and upon refusal of defendant so to convey the same as aforesaid that this decree be perpetual title to complainant of said lands, and be a bar of all title of defendant thereto.

WILSON, *Solicitor for Complainant.*

STATE OF OREGON, *County of Marion:*

John D. Boon, the complainant in the foregoing suit, having been duly sworn according to law, says the foregoing bill of complaint is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOHN D. BOON.

Subscribed and sworn to before me, at Salem, this 25th day of July, 1861.

G. B. WAYNON, *Justice of the Peace.*

8 JOHN D. BOON
vs.
JOHN B. MCCLANE.

To John B. McClane, def't:

You are hereby notified that unless you appear in the circuit court of the State of Oregon for Marion County, at Salem, on Monday, the 16th day of September, 1861, the first day of the September term thereof, and answer the within bill of complaint, the same will be taken as confessed and the prayer thereof granted by the court.

Salem, Oregon, July 25, 1861.

WILSON, *Sol'r for Comp't.*

Filed July 26th, 1861.

N. T. CATON, *Clerk,*
By J. T. HAMILTON, *Deputy.*

Bill of complaint filed May 10th, 1861.

JAS. WINSTON, *Clerk.*

STATE OF OREGON, *Marion County, ss:*

I certify that I have this the 26th day of July, 1861, served the within complaint and notice by delivering a copy of the same to J. B. McClane, the def't, personally, at Salem, Marion County, O'g'n.

GEO. A. EDES, *Sheriff Marion Co.*

9 In the circuit court of the State of Oregon for the county of Clackamas.

JOHN D. BOON, complainant,
vs.
JOHN B. MCCLANE, defendant.
} On change of venue from Marion County.

The defendant, for answer to the bill of complainant herein exhibited, shows to this hon. court that it is not true that the complainant on the 23d day June, 1853, or at any time since, was a settler on the public lands in Oregon.

Defendant denies that the complainant on the 23d day of June, 1853, or at any time since, commenced to reside upon and cultivate any portion of the lands described as set forth in the complaint.

Defendant denies that the complainant within three months from the commencement of his residence and cultivation on said tract of land, notified the surveyor general of Oregon that the said tract of land was claimed by him as a donation under the act of Congress passed 27th of September, 1850, entitled "An act creating the office of surveyor general of the public lands in Oregon, and to provide for the survey and to make dona-
10 tions to settlers of said public lands."

Defendant denies that the complainant within twelve months from the time of the commencement of his settlement and cultivation upon said land described in the bill, proved to the satisfaction of the surveyor general of Oregon, by two witnesses or any other number of witnesses, or in any other way, that the settlement and cultivation required by the said act of Congress had been commenced.

Defendant denies that complainant has in all or in any respects complied with the provisions of said act of Congress so as to entitle him to any of the said described tract of land.

Defendant denys that said tract of land, on the 23d day of June, 1853, or at any time since the commencement of complainant residence thereon, was vacant public land of the United States.

Defendant denies that the same was made vacant by reason of his (def't's) voluntary abandonment thereof at any time, and defendant further denies that he ever abandoned said tract of land.

Defendant denies that his residence and cultivation upon said land ceased on or about the 26th of March, 1853.

Defendant, further answering, say it is not true that he (defendant) had not resided upon and cultivated the said tract of land for four consecutive years prior to the 26th of March, 1853. Defendant further says that it is not true that he only resided upon said land continuously for the space of one year and nine months. Defendant further denys that the statement made by him (defendant) under oath before the surveyor general of Oregon on the affidavits made by said witnesses Wilson and Parrish, or either or any of them, was false.

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Defendant further denies that said Josiah L. Parrish, one of said witnesses, on the 22d of September, 1853, or at any other time, made affidavit retracting his former affidavit. Defendant denies that said witness on the 22d of September, 1853, or at any other time, proved or should that he (defendant) had not resided upon or cultivated the said tract of land for four years continuously prior to the said 22d of September, 1853.

Defendant denies that there were no witnesses other than the said Wilson and Parrish by whom he (the defendant) proved four years' continuous residence and cultivation upon the said tract of land.

Defendant denies that on the 17th day of May, 1854, or at any other time, the Commissioner of the General Land Office of the United States, at Washington City, notified the surveyor general of Oregon that there was any valid objection to the issuance of patent to said defendant because he (defendant) had not resided upon said land for four years continously, as required by law.

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Defendant, further answering, denies that he wrongfully or fraudulently in the matter of the conflict between complainant and defendant respecting the right to the said tract of land, produced or used before the said commission the affidavits of the said Wilson or Parrish.

For further answer defendant respectfully shows to this hon. court that from and after the making and filing of the said affidavits of said Wilson and Parrish, before and with the said surveyor general of Oregon, he (defendant) never at any time saw, used, or had possession or control of the said affidavits of said Wilson or Parrish.

Defendant further denies that it is not true that no proceedings were ever had, or decision made, or judgment rendered by the surveyor general of Oregon in reference to the conflict and question between the complainant and defendant, as to said land; but on the contrary, defendant avers that a certificate, No. 17, was duly and properly issued to defendant and to his (defendant's) wife, Helen C. McClane, for the said tract of land by the said surveyor general of Oregon.

Defendant further denies that the said Commissioner was induced by the false affidavits of said Wilson and Parrish, or any false affidavits, to believe that the defendant was entitled to the said tract of land described in the bill of complaint, or any part of said land.

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Defendant denies that by reason of the prosecution of said suit at law the complainant would suffer any loss or damages to any of his (complainant's) (pretended) rights to said land; and further, defendant denies that complainant has any rights in or to said land.

And said defendant, further answering, showeth to this honorable court that in the year A. D. 1854, said defendant commenced to reside upon said tract of land; that in the month of August, in that year, he purchased of William H. Wilson his property right to said land and the improvements

then existing upon said tract of land, consisting of one saw-mill and flouring mill and various other buildings, together with fences and other improvements; that at the time of said purchase from the said Wilson he, the said Wilson, was in possession of the said land, and was the owner of said improvements, and had good right to sell the same; that said defendant continued to reside upon said land and cultivated the same each and every year, from the first day of September, A. D. 1845, to the 26th day of March, A. D. 1853, continuously; that said defendant paid the sum of seven thousand dollars for the property right of said Wilson and the improve-
14 ments existing upon said tract of land at the time he purchased the same; that some time in the year A. D. 1847 said complainant rented of said defendant a house, situated upon said land described in the bill of complaint; that said complainant entered into and occupied said house as a tenant to defendant, and paid rent therefore; that during the year A. D. 1848 said complainant occupied and run the mills situated upon said land as a tenant of defendant, and paid him rent therefor as such; that during said last mentioned year said complainant purchased of defendant a part of the land described in said bill, to wit: one half, more or less, of that part of said tract of land commonly known as "Boon's Island," being one and a half acres of land, more or less; that upon said piece of land so purchased by complainant was situated the house rented by him of defendant as aforesaid; that said defendant executed and delivered to said complainant, at his request, a bond for a deed to said parcell of land so sold to complainant as aforesaid, whereby said defendant is bound unto said complainants in the sum of one hundred thousand dollars to execute to said complainant a conveyance of said parcell of land so sold to him as aforesaid upon conditions which are not now recollected by said defendant; that said bond has not been in any way cancelled or delivered up to said defendant, but that the same is
15 still retained by complainant; that in the year A. D. 1849 said complainant erected a house upon said parcell of land so purchased by him as aforesaid, and in said year A. D. 1849 entered into and occupied said house as a dwelling, and continued to reside therein from that time until some time in the autumn of the year A. D. 1854, when he wrongfully entered into the dwelling-house of said defendant, where he has continued to reside until the present time; that in the case of conflict between complainant and defendant, respecting the right to the said tract of land described in the bill of complaint, before the Commissioner of the General Land Office, at Washington City, witnesses were examined and testimony introduced by both complainant and defendant in support of their respective claims; that witnesses other than those whose affidavits were filed with the surveyor general of Oregon were examined by both parties, and all the matters of dispute between the parties hereunto were fully inquired into and examined and determined, and that after the decision of said Commissioner sustaining the claim of defendant, said complainant appealed from said decision to the Secretary of the Interior; that the said Secretary confirmed the discussion of the said Commissioner, and that thereupon a patent was issued to said defendant, and to his wife, Helen C. McClane, for the tract of land de-
16 scribed in said complaint in due form of law, the south half of said tract of land being disignated as the part enuring to said defendant, and the north half thereof as the part enuring to his said wife.

Defendant, further answering, showeth to the court that on or about the 20th day of September, A. D. 1853, said complainant, pretending that there was some defect in the proofs of defendant of the fact of his continued residence and cultivation upon said tract of land for four consecutive years, filed his notification with the surveyor general of Oregon, claiming said tract of land as a donation claim under the provisions of the act of Con-

gress aforesaid; that at the time of filing his said notification and afterwards complainant expressly stated that his only object in attempting to hold said tract of land as a donation claim was to secure himself from said pretended defect in the title of defendant; that he had no intention of holding adversly to defendant, and that in case the title of defendant should not be confirmed to said com't, and complainant should acquire title to the same by virtue of the provisions of the act of Congress aforesaid, he would hold the same for the benefit of defendant, and as his trustee, and that said complainant so informed said defendant; that the attempt to hold said tract of land as a donation claim by complainant for the use and benefit of defendant as aforesaid was agreed to be made, and was made, by complain-
17 ant for a valuable consideration passing to said complainant from one Josiah L. Parrish.

Defendant, further answering, showeth to the court that for more than four years prior to the 26th day of March, A. D. 1853, said defendant had resided upon cultivated said tract of land continuously; that he made due and lawful proof of said residence and cultivation, and that he in all things complied with the provisions of the act of Congress aforesaid so as to entitle him to the said described tract of land.

SMITH & PAGE, *Solicitors for Defendant.*

STATE OF OREGON, *County of Clackamas, ss:*

John B. McClane, the defendant in this suit, being first duly sworn, upon his oath, says that the foregoing answer is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

J. B. McCLANE.

Subscribed and sworn to before me this 4th day of September, 1861.

JAS. WINSTON, *Clerk.*

18 *Supplemental answer.*

In the circuit court of the State of Oregon for the county of Clackamas, in chancery.

STATE OF OREGON, *County of Clackamas:*

J. D. BOON
vs.
JOHN B. McCLANE.

John B. McClane, defendant in the above-entitled complaint, comes, and for supplemental answer to the complaint says that since the commencement of this suit, and since the filing of the original answer in this cause, to wit, on this sixth day of September, 1861, the said complainant has filed his answer to the complaint of this defendant in the suit at law against him, and in his answer has set forth that he has a full and perfect defense at law to said suit.

SMITH, PAGE & STRONG, *Sol's for Def't.*

John B. McClane, being duly sworn, says that the foregoing supplemental answer above is true of his own knowledge, except as to matters and things stated therein on information, and as to those matters and things he believes it to be true.

J. B. McCLANE.

Subscribed and sworn to before me this 6th day of Sept., A. D. 1861.

JAMES WINSTON, *Clk.*

19 In the circuit court of the State of Oregon for the county of Clackamas, in chancery.

JOHN D. BOON
vs.
JOHN B. MCCLANE.

John D. Boon, the above-named comp't, for replication to the answer of said def't, says that it is true that def't, in the year 1845, came upon the tract of land in dispute, but not to reside upon and cultivate it as a claim or with any pretence or intention of holding said land or any part thereof as his land claim. And comp. says that at that time he was holding under the provisional laws of Oregon another and different land claim, consisting, as comp't is informed and believes, of 640 acres; and comp't says that def't continued to claim and hold said other and different claim for a long time thereafter, and finally sold it to one Pugh. Comp't says it is not true that in 1845, or at any other time, def't purchased of Wm. H. Wilson his possessory right to said land in dispute, with the improvements thereon, but comp't avers that said Wm. H. Wilson and one L. H. Judson were holding said land together; that about the time referred to said Wilson and Judson divided said claim, said Wilson taking the east and said Judson the west half thereof, and that said Wilson sold his possessory right to said tract hereof to J. L. Parrish, and comp't says that said mills were on the west half of said claim, which belonged to said Judson, and that said def't only bought of said Wilson his right to said mills and privileges; and comp't
20 says that def't did not buy said mills, or pretend to hold them or obtain them with any intent or purpose of holding the land whereon they were as a land claim, as def't has repeatedly stated to comp't and other persons; and comp't says that said Judson was holding said west half of said claim as his own, and that said def't was possessed of said mills under and by the sufferance of said Judson.

Comp't says that it is not true that def't resided upon and cultivated said land each and every year from the 18th day of September, A. D. 1845, to the 26th day of March, 1853; but comp't says that up to August 15th, 1851, he lived portions of his time on said claim, but which did not belong to him, and in 1848 said def't left for California, with the intention of never returning, as he informed J. G. Clark and others, and was absent about eight months, to the 26th of March, 1853. And comp't says that on the 1st of September, A. D. 1845, and prior thereto, L. H. Judson resided upon and cultivated said land, and claimed it as his land claim, and that in 1845 or 1846 said Judson recorded the same in the records of the then territorial recorder, as provided by the laws of the provisional government, in his own name and as his land claim, and that said claim continued so recorded and was so claimed by said Judson until about the 15th day of August, A. D. 1851. And comp't says that said Judson so claiming as aforesaid personally resided upon and cultivated said land claim from said 1st day of Sep-
21 tember, 1845, until the latter part of 1849 or the early part of 1850.

Comp't further says that about the 15th of August, A. D. 1851, said def't purchased of said Judson his possessory right to said claim, and then recorded it in his own name and commenced claiming it as his land claim. Comp't says it is not true, as he is informed and believes, that said def't paid seven thousand dollars for the possessory right of said Wilson and the improvements in said lands, but comp't says that the possessory right was sold to J. L. Parrish, and has always been held and claimed by him, and was never sold to def'd't. Comp't says it is not true that in the year 1847, or at any other time, he rented a house of said def't situated on said land, or that he ever occupied any house as the tenant of the def't, or paid any rent to him.

Comp't says it is not true that in 1848, or at any other time, comp't occupied and run the mills on said land as a tenant of def't or paid him rent as such. Comp't says it is not true that in 1848 comp't purchased of the def't a part of the land described in said bill, but that the bond refered to by def't was given as hereinafter specified. Comp't says that in 1845 he purchased of said Judson the right of possession to about an acre of land on what is commonly called Boone's Island, and took a bond from him for a conveyance when said Judson obtained title from the United States; and comp't says that
22 at that time he paid said Judson for the right so purchased.

Comp't further says that after said Judson had abandoned said claim, and after said def't took it as his own in 1851, comp't gave up to def't the bond which he held from Judson as aforesaid, and took a bond from def't for a conveyance after said defendant should obtain title from the United States. Comp't says that said bond was taken by him for security, and on account of the abandonment of said claim by said Judson, and with the expectation and understanding that said McClane would fully complete his four years' residence and cultivation, and otherwise comply with the donation law; and comp't says that there are not any conditions in said bond for comp't to perform, and that there has been nothing for him to pay or do for said def't since its execution.

Comp't says that as to the allegation in the answer that comp't erected a house in 1849 on land bought of def't, comp't says that the same is not true; but comp't says that 1850 he erected a house upon the land obtained from Judson as aforesaid and occupied it. Comp't denies that in the autumn of 1854 he wrongfully entered into the dwelling-house of def't, where he now resides; but comp't says that said def't, long before comp't went into the house where he now lives, had sold his said mill and privileges and abandoned said claim, and left Oregon, and did not then pretend to have any right to said claim; and comp't says that said house and claim were
23 vacant and unoccupied when he moved into said house. Comp't says it is true that depositions were taken by comp't and def't and sent to the Commissioner of the General Land Office, but comp't says that he never was notified so to do by said Commissioner or any other officer; and comp't says that the Commissioner of the General Land Office wrote to comp't that he had decided against def't, but afterwards comp't learned that the case had been opened at Washington to enable def't to make more proof, and comp't then sent on some depositions. When he learned that the Commissioner had decided against him he notified the Commissioner and Secretary of the Interior that he would send an attorney to Washington to take an appeal to the said Secretary. And comp't says that pursuant to said notice he sent an attorney to Washington, but the said Secretary informed his said attorney that he had already decided the case. And comp't says that the said proceedings at Washington were informal, irregular, and illegal and fraudulent, as comp't is informed and believes.

Comp't says that it is not true that at the time of filing his notification, or at any other time, he stated that his only object in attempting to hold said tract of land was to secure himself; that it is not true that he ever said that he had no intention of holding adversely to def't or that he ever said
24 that he would hold the same for the benefit of or as the trustee of said def't. Comp't says it is not true that he ever told def't anything of that kind or to that effect.

Comp't says it is not true that he received any credit or value from Josiah L. Parrish, or any other person, for an attempt to hold the said land for the benefit of def't; and comp't denies that he ever made any agreement for that purpose, and that def't's statements in reference to that matter are not true. Comp't says that when said def't abandoned said

claim he stated to James G. Clark and various other persons that he knew that he had not resided upon and cultivated said land for four years, but that he would not stay any longer if he did lose the lands. And comp't says that many persons talked of taking said claim, and some were arranging so to do. And comp't notified upon said claim, for his own protection, and for his own use and benefit, and on the 23rd of June, A. D. 1853, entered upon and claimed that part of said claim, the possession of which had been abandoned by def't, adversely to def't and all other persons, and ever since has so held the same. And comp't says that while he has always claimed said land as exclusively his own, he has expressed a willingness to settle the controversy with def't upon fair and equitable terms.

Comp't says it is not true that for more than four years prior to the 26th of March, 1853, said defendant had resided upon and cultivated
25 said land continuously, and that it is not true that def't made due and lawful proff of said residence and cultivation; that it is not true that he, in all things, complied with the provisions of the donation act, and that he is not entitled to said tract of land.

WILSON, KELLEY & WILLIAMS, *Att'ys for Comp't.*

STATE OF OREGON, *Clackamas Co., ss:*

John D. Boon, being duly sworn, says that the foregoing replication is true of his own knowledge, except as to those matters stated upon information and belief, and as to them he believes it to be true.

JOHN D. BOON.

Subscribed and sworn to before me this 5th day of September, 1861.

JAS. WINSTON, *Clerk.*

26 At a supreme court, begun and held at the court-room, in the city of Salem, in and for the State of Oregon, on Monday, the 7th day of September, 1863, before the Hons. R. P. Boise, chief justice, P. P. Prine, E. D. Shattuck, R. E. Strallon, J. G. Wilson, associate justices, the following proceedings were had:

TUESDAY, *twenty-sixth day.*

JOHN D. BOON, appellant,
vs.
JOHN B. MCLANE, respondent.

Now, at this day, comes the said plaintiff, by Williams & Kelley, his solicitors, and the said respondent, by Smith & Strong, his solicitors, and this cause comes on to be heard on the original bill, answer, replication, and proofs of the respective parties, and the court, after hearing the allegations and proofs and the argument of said solicitors, and fully considering the same, find—

First. That the affidavits named in the bill, to wit, of said John B. McLane, J. L. Parrish, and William H. Wilson, by which said John B. McLane proved to the surveyor general the fact of his four years'
27 residence and cultivation prior to the 26th of February, 1853, were false and fraudulent.

That the said John B. McLane had not, on the 26th day , 1853, resided on and cultivated the land described in the complaint for four years, as required by law, to entitle him to a patent to said land under the act of Congress of the 27th day of September, 1850, entitled "An act creating the office of surveyor general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands."

Third. That the said tract of land was abandoned by said John B. McLane on or about the said 26th day of March, 1853, and became vacant public

land of the United States, which said tract of land is described as follows: "Beginning at a point on the bank of the Willamette River 23 chains west and 6.40 chains north of the corner of sections 14 and 15, 22 and 23; thence east 66.54; thence south 19° west, 41.27 chains; thence north 71° degrees west, 16.80; south 19° west, 19.28; south 70° 30′ east, 7.60; south 19° west, 12.10; north 57.30 west, 32.60; north 8.30 west, 8.58; north 49 west, 17.00, with meanderings as follows: North 12 east, 3.60; north 17° 30′, 9.00; north
28 25 east, 5.00; north 3.60; north 15° east, 3.10; N. 12 east, 6.50, to the place of beginning, containing 298.59 acres, being the same land described and contained in patent of defendant.

Fourth. That said John D. Boon, on twenty-third day of June, 1853, entered on said land as a claimant thereof under said act of Congress, and continued to reside on and cultivate the same for four consecutive years from the said twenty-third day of June, 1853, and that he has in all things complied with the provisions of said act of Congress, so as to entitle him to a patent to said land as the donee of the government under said act.

And it further appearing to the court that a patent to said land has been issued to said J. B. McLane, and that said John B. McLane has instituted a suit at law against said Boon to recover from the possession of the south half of said land, which suit is now pending in the circuit court of Clackamas County:

It is therefore ordered, adjudged, and decreed, first. That the decree of the court below in this cause rendered, dismissing the original bill in this cause, be, and the same is hereby, reversed. Second. That the said
29 John B. McLane, his heirs and assigns, hold said south half of said tract of land as a trustee for said J. D. Boon, his heirs and assigns, and that the said John B. McLane, his heirs and assigns, convey the said premises to the said John D. Boon, his heirs and assigns; and if the said John B. McLane, his heirs and assigns, neglect or refuse to convey as aforesaid, then this decree shall be a perpetual title to said land to said John D. Boon, his heirs and assigns, and be a perpetual bar to the title of said John B. McLane, his heirs and assigns, be forever bound and perpetually enjoined from any further prosecution of said action at law against said John D. Boon, his heirs and assigns, for the recovery of said land as aforesaid, and that a mandate issue from this court to the said circuit court of Clackamas County directing said court to forever stay all further proceedings in said action at law. And it is further decreed that appellant have and recover of and against respondent the costs and expenses in the court below taxed, and the further sum of 25 and 25-100 dollars, costs and disbursements in this court allowed, and that this cause be remanded to the court below, together
30 with a copy of this decree, for further proceedings, as herein directed, and to final execution, as provided by law.

STATE OF OREGON, *County of Marion, ss:*

I, Lucien Heath, clerk of the supreme court of the State of Oregon, do hereby certify that the foregoing is a true and correct transcript of the judgment entry and decree of the supreme court of the State of Oregon in the case of John D. Boon vs. John B. McLane, as appears by the record of said court now in my office, in Salem, in said State.

Witness my hand and the seal of said court, at Salem, this 3d day of November, 1863.

[SEAL.]

LUCIEN HEATH, *Clerk*,
By R. WILLIAMS, *Deputy.*

31 I, Lucien Heath, clerk of the supreme court of the State of Oregon, hereby certify that the foregoing is a true and correct transcript of

the record in the case of John D. Boon *vs.* John B. McLane, now on file in my office, including the complaint, answers, replication, and judgment entry therein.

Witness my hand and the seal of this court this 3 day of November, A. D. 1863.

LUCIEN HEATH, *Clerk Supreme Court, Oregon,*
By R. WILLIAMS, *Deputy.*

32 UNITED STATES OF AMERICA, *ss:*

To John D. Boon, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to writ of error filed in the clerk's office of the supreme court of the State of Oregon, wherein John B. McLane is plaintiff and you are defendant in error, to a show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Reuben P. Boise, chief justice of the supreme court of the State of Oregon, this 14th day of October in the year of our Lord 1863.

REUBEN P. BOISE.

32½ STATE OF OREGON, *Marion County, ss:*

I certify that I have this the 19th day of October, 1863, served the within citation for error to the Supreme Court of the United States by delivering a true copy thereof to the within-named John D. Boon, defendant in error, at Salem, Marion County, Oregon.

SAM'L ———, *Sheriff Marion Co.*

Filed in the supreme court this 14th day of October, 1863.

L. HEATH, *Clerk.*
By R. WILLIAMS, *Deputy.*

33 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the supreme court of the State of Oregon, and to Reuben P. Boise, chief justice, Riley E. Stratton, P. P. Rim, Joseph G. Wilson, and Erasmus D. Shattuck, justices of said court, greeting:

Because in the record and proceedings, as also in the rendition of a judg^ment and decree, in a plea, which is in said supreme court, and before the justices of said supreme court, between John D. Boon as plaintiff, and John B. McClane as defendant, a manifest error hath happened, to the great damage of the said John B. McClane, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court then and there to be held, that the record and proceedings aforesaid, being inspected,
34 the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this seventh day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth (88th.)

In testimony whereof, I, Hamilton Boyd, clerk of the circuit court of the United States for the 10th circuit, in the district of Oregon, have this 7th day of October, A. D. 1863, hereunto set my hand and affixed the seal of said court, at my office, in the town of Portland, in said district.

[SEAL.] HAMILTON BOYD, *Clerk.*

35 Filed in the Supreme Court this 15th day of October, 1863.

L. HEATH, *Clerk,*
By R. WILLIAMS, *Deputy.*

36 I hereby certify that I filed a certified copy of the within writ of error in my office, which was left there by the pl'ff in error for the def't in error, this 14th day of October, 1863.

L. HEATH,
Clerk of the Supreme Court of the State of Oregon,
By R. WILLIAMS, *Deputy.*

37 Supreme Court of the United States.

JOHN B. MCCLANE, plaintiff in error,
vs.
JOHN D. BOON, def't in error. } In error.

Know all men by these presents that we, John B. McClane, plaintiff in error, and J. L. Starkey, M. L. Savage, J. H. Moores, A. M. Belt, Joseph Holman, William Miller, Milton Shannon, Rob't Smith, J. H. Starr, Thomas Green, are held and firmly bound unto the above-named John D. Boon, in the sum of one thousand dollars ($1,000) to be paid to the said John D. Boon, defendant in error, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this the thirteenth (13th) day of October, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas the above-named John B. McClane, plaintiff in error, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment or decree rendered in the above-entitled suit by the supreme court of the State of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named John B. McClane shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his
38 plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

J. B. McCLANE. [SEAL.]
J. L. STARKEY. [SEAL.]
M. L. SAVAGE. [SEAL.]
J. H. MOORES. [SEAL.]
A. M. BELT. [SEAL.]
JOSEPH HOLMAN. [SEAL.]
WILLIAM MILLER. [SEAL.]
MILTON SHANNON. [SEAL.]
ROBERT SMITH. [SEAL.]
J. H. STARR. [SEAL.]
THOMAS GREEN. [SEAL.]

Sealed and delivered in presence of—

William Roberts, witness to signing and sealing of J. L. Starkey, M. L. Savage, and J. H. Moores.

J. H. Haas, witness to signing and sealing of A. M. Belt.

L. E. Brott, witness to signing and sealing of Jos. Holman and Wm. Miller.

L. W. Jones, witness to signing and sealing of Milton Shannon.

John Q. Adams, witness to signing and sealing of Robert Smith.

J. C. Bowpe, witness to signing and sealing of J. H. Starr.

G. W. Stimpson, witness to signing and sealing of Thomas Green.

39 I hereby approve the within bond, and certify that the security is good and sufficient for the penalty thereof.

Done this 14th day of October, 1863.

RUBEN P. BOIS,
Chief Justice of the Supreme Court of the State of Oregon.

Filed in the supreme court this 15th day of October, 1863.

L. HEATH, *Clerk*,
By R. WILLIAMS, *Deputy*.

40 Be it remembered that at a regular term of the circuit court of the State of Oregon for the county of Clackamas, begun and held at the court-house, at Oregon City, on Monday, the second day of September, A. D. 1861, pursuant to law—present, the Hon. A. E. Wait, judge; W. W. Page, pros. att'y; Jos. Winston, clerk, and John Thomas, sheriff—the following proceedings, among others, were had, to wit, on Thursday, the 12th day of September, 1861, and on the tenth judicial day of said term.

John D. Boon
vs.
John B. McLane.

On motion of the counsel for plaintiff, this cause was continued until the next term of this court.

41 And afterwards, to wit: Be it remembered that a regular term of the circuit court of the State of Oregon, for the county of Clackamas, begun and held at the court-house, in Oregon City, on Monday, the 3d day of March, 1862—present, the Honorable A. E. Wait, judge; W. W. Page, prosecuting att'y; Jas. Winston, clerk, and John Thomas, sheriff—the following proceedings, among others, were had, to wit, on Friday, the 5th judicial day of the term, and 7th day of the month of March, 1862.

John D. Boon
vs.
John B. McLane.

This cause being ready for hearing, the complainant came by Williams, Kelley & Wilson, his attorneys, and the defendant by Smith, Strong, Logan, and Page, his attorneys, and the court proceeded to hear the allegations and testimony of the parties and the arguments of their counsel. Whereupon it was considered by the court that the complainant is not entitled to the relef prayed for in the bill, and it was ordered and adjudged by the court that the bill of complainant be dismissed, and that the defendant have judgment against the complainant for his costs in this suit to be taxed, and that execution issue therefor. Thereupon the complainant gave notice of an appeal. On motion of the defendant, he was allowed to with-
42 draw from the files the patent submitted in evidence in this cause upon filing in its stead a certified copy thereof.

(Signed) A. E. WAIT, *Judge.*

43 *Cost bill.*

JOHN D. BOON
vs.
JOHN B. MCCLANE.

Clerk's fees:

Jas. Winston, of Clackamas	$35 25	
N. T. Caton, of Marion	3 60	
		$38 85

Sheriff fees:

Geo. A. Edes, of Marion	4 80	
John Thomas, of Clackamas	1 00	
		5 80

Witness fees:

T. J. McCarver, 1 day, miles, (paid by def't)	2 00	
D. C. Keizer, taxed on deposition	3 40	
Webley Hauxhurst..do	1 50	
Wm. P. Pugh.....do	2 30	
Aaron Purdy.....do	1 70	
Sam'l Parker.....do	3 30	
W. H. Recton.....do	1 50	
L. H. Judson.....do	1 50	
John B. Keizer.....do	3 80	
L. Westacott.....do	1 50	
John Force .....do	3 60	
F. R. Smith.....do	1 90	
Jas. Force .....do	1 50	
L. F. Grover.....do	1 50	
John Ford .....do	1 50	
David Leslie .....do	1 50	
C. J. Durbin.....do	1 50	
		35 50
44 Jas. S. Ross, taxed on deposition	2 10	
E. J. Harding....do	1 50	
J. J. Bash.....do	1 70	
J. M. Garrison.....do	5 00	
J. L. Parrish.....do	1 50	
A. B. Stoughton.....do	4 00	
Sam'l Parker.....do	3 80	
V. K. Pringle .....do	2 50	
S. B. Judson .....do	2 50	
Annias Aldrich.....do	1 50	
N. T. Caton .....do	1 50	
J. N. Gilbert.....do	1 50	
B. F. Bonham.....do	1 50	
J. G. Wilson.....do	1 50	
(Paid by Boon, $19 60.)	32 10	
Jas. G. Clark, taxed on deposition 1 70		
Mrs. Rachel Clark .....do..... 1 70		
(Paid by Chadwick.)	3 40	
W. H. Judson's fees, not taxed on deposition.....		
W. W. Chapman's fees, not taxed on deposition.....		
		35 50

Justice's fees:

C. N. Terry, on depositions	$118 25	
Jas. L. White, on deposition, (paid by Chadwick)	4 00	
		$122 25

Clerk fees:

L. Morris, on depositions, (paid by pl'ff's att'y)	5 15
County fee	5 00
	248 05

45 Clerk's fees due Jas. Winston:

Copy of the paper, 73 folios, at 20 cts	$14 60
Transcript, &c., of deed, 9 folios, at 20 cts	1 80
2 certificates and seals	2 00
	18 40
Issuing notice of appeal, May 22nd, 1862, 50 cts; filing pracepe, 15	65
	19 05
Cert. sheriff's return on notice of appeal, and filing notice	35
	19 40

Sheriff fees:

Geo. A. Edes, of Marion County, one notice of appeal served and filed May 30th, 1862	$1 45

STATE OF OREGON, *Clackamas County:*

I, James Winston, clerk of the circuit court of the State of Oregon, certify the annexed papers to be the entire record on file in said court, in the case of J. D. Boon *vs.* J. B. McLane, and also the transcript of all journal entries therein, and a correct cost bill.

Witness my hand and the seal of said court affixed, the twenty-eighth day of April, A. D. 1862.

[SEAL.] JAS. WINSTON, *Clerk.*

46 STATE OF OREGON, *County of Clackamas:*

To John B. McClane, def't:

You are hereby notified that John D. Boon has taken an appeal to the supreme court of the State of Oregon from the judgment and decree of the circuit court of the State of Oregon for Clackamas County, given in your favor against the said John D. Boon, at the March term, A. D. 1862, in chancery, and unless you appear in the said supreme court on the 2nd Monday of July, 1862, the July term thereof, 1862, the cause will be heard in your absence.

Witness the seal of the said circuit court the 22nd day of May, 1862.

[SEAL.] JAS. WINSTON, *Clerk.*

I certify that I have this the 24th day of May, 1862, served the within notice, by delivering a certified copy of the same to the within-named J. B. McClane, at Salem, Oregon.

GEO. A. EDES, *Sheriff of Marion Co.*

Filed May 30th, 1862.

JAS. WINSTON, *Clerk.*

47 To the clerk of the circuit court of Clackamas County:

Please issue notice of appeal to the July term, 1862, of the supreme court of the State of Oregon, to John B. McClane, from the judgment or decree in the case of John D. Boon *vs.* John B. McClane, directed to the said M'Clane, and send the same to the sheriff of Marion County for service, (Geo. A. Edes, sh'ff.)

May 21st, 1862.

WILLIAMS, KELLEY & WILSON, *Att'ys for Boon.*

Filed May 21st, 1862.

JAS. WINSTON, *Clerk.*

In the circuit court of the State of Oregon for the county of Clackamas, March term, 1862, in chancery.

JOHN D. BOON, comp't,
vs.
JOHN B. MCCLANE, def't.

We promise to pay all costs that may be awarded against John D. Boon, upon his appeal to the supreme court of Oregon in this cause, or any new or modified judgment that may be recovered against him.

J. D. BOON.
J. S. M. MOORE.
WM. W. BUCK.
A. S. LOVEJOY.
A. C. DEMENT.

48 JOHN D. BOON
vs.
JOHN B. MCCLANE. } In chancery.

Now comes the complainant, and moves the court for an injunction as prayed for in the bill upon the pleadings and evidence in the case.

WILSON, KELLEY & WILLIAMS, *for Comp't.*

Filed Mar. 4, 1862.

JAS. WINSTON, *Clerk.*

JOHN D. BOON
vs.
JOHN B. MCCLANE. } In chancery.

W. A. Starkweather, being duly sworn, says that he is the register of the land office at Oregon City; that he has examined the files and records in his office in reference to the land claimed by the parties to this suit; that according to those files and records, there never was any proceedings between the parties in his said office, or any decree made or judgment rendered therein in any contest as to the substantial rights of said parties to said land; that the only evidence or final proff on file in said office of the residence and cultivation of said def't, besides his own affidavit, for four years are the affidavits of Josiah G. Parrish and Wm. A. Wilson, and that the only evidence or final proff of the residence and cultivation of said Boon, besides his own affidavit, for four years are the affidavits of Z. Pollard and A. Purdy, according to his best knowledge and belief.

W. A. STARKWEATHER.

Subscribed and sworn to before me this 6th day of Sept., 1861.

JAS. WINSTON, *Clerk.*

49 Claims embraced by certificates Nos. 19, 20, 68, 69, and 67, embraced by this abstract, have rejected, as you will perceive, because

of their embracing in part land occupied as town sites, which, as decided by the Secretary of the Interior, a copy of whose decision was sent to you on the 24th inst., are not subject to donation claims. Should the residence of the settlers be within the town, the claim fails to its whole extent, it requiring both residence and cultivation to secure a valid right. Should it not, the claimant cannot receive a certificate for the agricultural part of this claim until after the proper authorities have entered so much of the town site and the adjoining land as they are entitled to under the *the* act of 1844. In the case of No. 19, also, Mr. McClane does not prove continuous residence, he having been absent for nearly nine months in California, during which it is not shown that his household, if he had any, remained on the land cultivating it for his benefit.

LAND OFFICE, OREGON CITY, *Sept.* 16, 1861.

We, the register and receiver at Oregon City, certify that the foregoing is a true copy of a letter from the Commissioner of Gen. Land Office, addressed to Surveyor General Gardiner, bearing date May 17, 1854, touching donation certificate No. 19, on file in this office, as recorded in letter book of this office, page 79.

W. A. STARKWEATHER, *Register.*
W. T. MATLOCK, *Receiver.*

Filed Sept. 1st, 1861. JAS. WINSTON, *Clerk.*

50 Circuit court, State of Oregon, Clackamas Co.

JOHN D. BOON
vs.
JNO. B. MCCLANE.

Aaron Purdy, being first duly sworn on behalf of the defendant, deposes and says: That I am fifty-five years old, and know the parties to suit, John D. Boon and John B. McClane, and know the north Salem claim in dispute, and reside in Marion County since 1847. Part of the time in North Salem, part of the time six miles below, and now live on a part of the claim in dispute.

Ques. 1st. State, if you know, who occupied and claimed the land claim in dispute in 1847 and 1848.

Ans. I do not know who claimed it. I know who was there. The latter part of October, 1847, I went there in company with John Savage, to get some brick. Found McClane officiating there. McClane counted out the brick.

Ques. 2nd. State if you know of McClane's having or claiming any interest in said claim prior to 1850.

(Objected as incompetent and irrelevant.)

Ans. In 1849, I think in October, I went to McClane and proposed to rent the mill. He hesitated a little about renting it. I then proposed that he should write to Judson. Told him Judson knew my abilities to tend
51 the mill, and get his consent. I supposed that he, Judson, was a partner of his, and would want his consent about it. After being absent a short time, McClane told me he had got a letter from Judson. He, Judson, advised McClane or requested him to let me have the mill. I drew up the agreement as though Judson and McClane were in partnership. He accepted of the articles as I had them. I know nothing more of his interest that year.

(This answer objected to as incompetent.)

Ques. 3d. Did Mr. Judson, at any time prior to 1850, tell you anything with reference to the ownership of the claim in dispute? If so what and where?

(Objected to as incompetent and irrelevant.)

Ans. I cannot say that he said anything about the claim, only in the winter of 1848 and 1849, while McClane was in California, Judson stated to me McClane and his son, Leonard, was in California, and expected when they returned they would have money to carry on business with.

(This answer objected to as incompetent and irrelevant.)

Ques. 4. State at what time, if ever, you first learned that Mr. McClane was owner in whole or part of said claim.

Ans. The first thing I ever recollected in February, 1850, it might
52 be earlier or later, I proposed to buy the whole claim, mills and all. I asked him his price; he said fifteen thousand dollars. I then endeavored to get some partners to go in and buy it. We made up a company of five to buy it, composed of myself, Wm. Cox, Philester Lee, A. A. Robinson, and John D. Boon. I do not know who proposed it to Boon. I think we all met at McClane's; talked ever the terms. The terms were five thousand dollars down, five thousand dollars, or near that, was to be paid to the mission for purchase-money of the mills, the balance on time. Some of the men could not raise the money, and that trade failed. I supposed—it was my understanding—all the mills, water privilege, and claim with the exception, I believe, of two blocks. The town was not laid off; we expected to lay off one.

(This answer is objected to by plaintiff as incompetent and irrelevant.)

Ques. 5. State the reason that the trade was broken off.

Ans. I think Mr. Cox for one could not raise the money.

Ques. State whether a negotiation above referred to took place before or after building of the new first mill by McClane.

(Objected to by plaintiff as incompetent and irrelevant.)

53 Ans. It was before; about one year before, or more.

Ques. 7. Why did the company undertake to purchase the claim of McClane?

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. I do not know why the rest did; I can answer for myself. I supposed he was a part owner; if he made a trade in good faith Judson would sanction it.

Ques. 8. State if said negotiation took place before the dissolution of copartnership between Judson and McClane.

Ans. It did, more than one year. I think they dissolved partnership in August, 1851.

Ques. 9. State if you know of any improvements being made on said claim about the time of said negotiation. If so, by whom were they made, what were they?

Ans. It was in April, 1850. Mr. McClane wanted to move some fence and put it around the pasture now enclosed. I told him I would employ him a team. A man by the name of John Hamilton came to the mill; I told him if he would haul the rails I would grind a grist, and McClane would pay
him for it, he did haul one or two days. When he got ready to start
54 home he told me Mr. McClane had paid him. There was other hauling done; I do not know who did it. He, McClane, I believe, finished fencing the pasture.

Cross-examination.

Ques. 10. Do you undertake to say that McClane built the grist-mill, or was it done while McClane and Judson was in partnership, and was the work superintended by Judson?

Ans. I would not be certain; I think after they had dissolved partnership by McClane.

Ques. 11. Was the fencing and hauling referred to above done while they were partners?

Ans. I think it was done before they dissolved partnership.

(The plaintiff now makes this witness his own.)

Ques. 12. How long have you known Mr. Boon to reside upon and cultivate the claim continuously?

Ans. I think, as near as I can recollect, in April, 1851, with the intention of holding a claim in the hills, the Powell claim. That time he was absent 2 or 3 weeks. The next I saw of him he was back and said he would not hold his claim in the hills. From that up to this time he has lived upon the claim in dispute. While living on the island he cultivated a small garden, and about eight or nine years ago he moved where he now lives, and cultivated the land since every year, and one year he employed me to plow some corn and potatoes.

55

Ques. 12. State, if you know, whether Boon has made any improvements upon said claim outside of the island since 1853.

Ans. There was a stable built there, a woodshed and fence; some of it in the place where the fence stood before.

Ques. 13. Is the island spoken of as Boon's Island a part of the claim in dispute, and what part of the claim in dispute are all of the improvements made by Boon upon?

Ans. The island is a portion of this claim in dispute, and the improvements are all upon the south half of the claim in dispute.

Examination in chief resumed and cross-examination.

Ques. 14. State whether the land cultivated by Mr. Boon was not enclosed and cultivated by McClane before he went to the States.

56

Ans. I think it was. I do not know by whom all the enclosure was made; some of it was made by McClane. I do not mean to include that made on the island; that was Boon's wholly. Boon was living on the island when I came to Oregon in 1847, with the exception of the two or three weeks above mentioned, and has lived on the claim ever since.

Ques. 15. Do you of your own knowledge know Boon cultivated the land every year for four years from 1853?

Ans. I know he was living there; the ground was cultivated ever year, and one year he employed me; and the others I do not know who done it; I suppose Mr. Boon did.

AARON PURDY.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the depositions of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *Att'y for Boon.*

57 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 17th day of February, 1862, between the hours of ten o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, the nothing but the truth, and that the said deposition was carefully read to said witness and subscribed by him.

Dated at Salem, the 17th day February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees:

1 day	$1 50
Mileage, 2 miles	20
	1 70

Justice's fees:

15 folios	$3 75
1 certificate	1 00
	4 75

Justice's fees:

15 folios	$3 75
1 certificate	1 00
	4 75

Filed Mar. 3d, 1862. JAS. WINSTON, *Clerk.*

58 No. 45.—*Notification to the surveyor general of Oregon on the settlement of public land in township numbered 7 S., range 3 W.*

Pursuant to the act of Congress approved on the 27th day of September, 1850, entitled "An act to create the office of surveyor general of public lands in Oregon, and to provide for the survey and make donations to settlers of the public lands," and amendments thereto, I, John B. McClane, a married man of Marion County, in the Territory of Oregon, hereby give notice of my claim to donation 640, of land known, and designated in the surveys and plats of the United States as a part of sec's 14, 15, 22, and 23, in T. 7 S., R. 3 W., particularly bounded as follows: Beginning at a stake on the east bank of the Willamette River 2.50 chains west and 6.10 chains north of the SE. corner of section 15, T. 7 S., R. 3 W.; running thence east 66.00 chains; thence S. 19° 30′ W., 41.00 chains; thence N. 71° W., 16.95 chains; thence S. 19° 30′ W., 19.8 chains; thence S. 70° 30′ E., 7.60 chains; thence S. 19° 30′ W., 12.00 chains; thence N. 60° W., 31.50 chains; thence down Mill Creek to the Willamette River; thence
59 northerly along the meanderings of the Willamette to the place of beginning, as appears by a diagram hereunto annexed, marked 45.

JNO. B. McCLANE.

Oregon City, 26th February, 1852.

60 John B. McClane, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is a white settler on the public lands in Oregon, and was a resident thereof on and before the first day of December, 1850, and above the age of 18 years on the first day of December, 1850; that he is a native-born citizen of the United States, and that he was born in Philadelphia, Penn., in the year 1820; that he has personally resided upon and cultivated that part of the public land in Oregon particularly described in Notification No. , hereunto annexed, continuously from the 30 day of September, 1845, to the 26th day of February, 1852; that he is intermarried with Helen C. McClane, his wife, and that he was legally married to her on the day of April, 1849, in Salem, Oregon Territory.

JNO. B. McCLANE.

Subscribed and sworn to before me, in Oregon City, this 26th day of February, 1852.

JNO. B. PRESTON, *Sur. Gen. of Oregon.*

61 No. 45.

Wm. H. Wilson, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is personally acquainted with John B. McClane, the person who claims a donation right to the tract of land described in Notification No. 45, and Hellen C. McClane, his wife; and that he has known them to live together as man and wife from April, 1849, to 26 February, 1852, and that they are and were reputed by their neighbors as such during said period.

W. H. WILSON.

Subscribed and sworn before me this 26 day of February, 1852, at Oregon City.

JNO. B. PRESTON, *Sur. Gen. of Oregon.*

62 William H. Willson, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by John B. McClane, and particularly described in Notification No. 45, hereunto annexed; that he is personally acquainted with said John B. McClane, and knows that he has personally resided upon and cultivated said tract or tracts of land continuously from the day of September, 1845, to the 26th day of February, 1852.

WILLIAM H. WILLSON.

Subscribed and sworn before me this 26th day of February, 1852, at Oregon City.

JNO. B. PRESTON, *Sur. Gen'l of Oregon.*

No. 45.

Josiah L. Parrish, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by John B. McClane, and particularly described in Notification No. 45, hereunto annexed; that he is personally acquainted with said John B. McClane, and knows that he has personally resided upon and cultivated said tract or tracts of land continuously from the day of June, 1846, to the 26th day of February, 1852.

JOSIAH L. PARRISH.

Subscribed and sworn before me this 26th day of February, 1852, at Oregon City.

JNO. B. PRESTON, *Sur. Gen'l of Oregon.*

63 TERRITORY OF OREGON, *Clackamas County, ss:*

Josiah L. Parrish, of Marion County, in the Territory of Oregon, being first duly sworn, says that on the 26th day of February, A. D. 1852, he was called on as a witness, and appeared before the surveyor general of Oregon, touching the tract or tracts of land claimed as a donation by John B. McClane, and particularly described in Notification No. 45, and was then and there examined orally by the said surveyor general respecting the personal residence upon and cultivation of the said tract or tracts of land claimed by the said John B. McClane under the act of Congress of September 27, 1850, making donations to settlers of public lands in Oregon; that after said oral examination this deponent put his name to an affidavit, partly printed and partly written, which he then supposed contained in substance the statement hereinafter set out respecting the personal residence upon and cultivation of the aforesaid tract or tracts by the said McClane; that he has this day examined particularly said affidavit so subscribed as aforesaid by him, and finds through his own inadvertance in not looking at it with sufficient care at the time, and not calling the attention of the surveyor general

more particularly to the facts as he then wished and now wishes to state them; that those facts are not set forth as he desired to have them, on
64 account of his own inattention, as hereinbefore stated; that said affidavit so subscribed and sworn to by him as aforesaid should be modified in this, that is to say, that he is personally acquainted with John B. McClane, and knows that he, said McClane, personally resided upon and cultivated said tract or tracts of land from the month of June, 1846, until sometime, he thinks, in the fall or winter of 1847, when said McClane went, this deponent supposes for a temporary purpose, from his residence on said land to the Cayuse country, in Oregon, where he remained in public service in a war with the Cayuse Indians until some time in the spring or summer of 1848, when he returned to and did reside upon said tract of land until September or October of the same year, when he, the said McClane, again left said tract of land and went, this deponent also supposes for a temporary purpose, to California to dig gold, or do other business, and that he, the said McClane, returned to his said residence in Oregon, and to the said tract of land some time in the spring of 1849, and that he, the said McClane, continuously there remained and personally resided upon and cultivated said tract or tracts of land until the 26th day of February, 1852, the date of said examination.

And this deponent further says that the foregoing is substantially
65 what he then intended and desired to swear to in the premises, and which he now avers, as he then averred, was true to the best of his knowledge, recollection, and belief, and herein states and reiterates to be the whole truth; that while he does not intend to impeach or find fault with the surveyor general in his action touching said affidavit, but rather to inculpate himself for his own negligence in not carefully reading or hearing read its contents, by this deponent only wishes to correct and set forth his testimony then and there given and taken as aforesaid on the subject.

And further this deponent saith not.

JOSIAH L. PARRISH.

Subscribed and sworn before me this 22d day of September, A. D. 1853.

JNO. B. PRESTON, *Sur. Gen. of Oregon.*

66 *Oregon donation certificate No.* 19.—*Notification No.* 45.

Whereas, in conformity with the provisions of the 7th section of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the public lands," and amendments thereto, John B. McClane, of the county of Marion, in said Territory, claiming a donation right in virtue of the acts aforesaid to the following tract of public lands known and designated in the surveys and plats of the United States as the claim No. 43, being part of section 14, 15, 22, and 23, in T. 7 S., R. 3 W., particularly bounded and described as follows: Beginning at a point on the bank of the Willamette 22.00 chains west and 6.40 chains north of section corners 14, 15, 22, and 23; thence east 66.54 chains; thence S. 19° W., 41.23 chains; thence N. 71° W., 16.90 chains; thence S. 19° W., 19.78 chains; thence S. 70° 30′ E., 7.60 chains; thence S. 19° W., 12.10 chains; thence N. 59° 30′ W., 32.60 chains; thence N. 8° 30′ W., 8.58 chains; thence N. 49° W., 17.00 chains, with meanders as follows: N. 12° E., 3.60 chains; thence N. 17° 30′ E., 9.00 chains; thence N. 25° E., 5.00 chains; thence north, 3.60 chains; thence N. 15° E., 3.10 chains; thence N. 12° E., 6.50 chains, to the place of beginning, containing 298 59-100 acres. The north
½ to Helen C. McClane, wife of the said John B. McClane, and the
67 south ½ to John B. McClane, who having proven to the satisfaction of

the register and receiver of the land office for the Willamette district, in Oregon Territory, the fact that such settlement was commenced on the day of June, 1846, four years prior to the date hereof, and having, pursuant to the requirements of the acts aforesaid, established by two disinterested witnesses the fact of continued residence and cultivation required by the 4th section of said act:

Now, therefore, be it known that I, John B. Preston, surveyor general of public lands in Oregon, do hereby, and pursuant to the 7th sec. of the act aforesaid, certify to the Commissioner of the General Land Office the facts aforesaid, accompanied by the evidence thereof, in order that a patent may be issued to said claimant for the tract of land above described, as required by the 7th section of the act aforesaid, provided the said Commissioner shall find no valid objection thereto.

Given under my hand, at the office of the surveyor general, this twenty-eighth day of July, 1853. JNO. B. PRESTON,

Surveyor of the Public Lands in Oregon.

68 *Objections to certificates of donation claims sent to Commissioner.*

GENERAL LAND OFFICE, *May 17th*, 1854.

* * * All these claims are described by metes and bounds instead of subdivisions of sections, and, with the exception of Nos. 19, 20, 34, 35, 48, 57, 62, 42, 68, 69, and 67, are suspended for the common cause that there was no special plat of survey sent up with them or the original proff, as required in such cases by the instructions from this office, dated March 6th, 1851. These documents you will please forward, those appertaining to each case appropriately numbered. As you are required to retain the original notification, upon which were to be endorsed the survey of the claims, you will forward with each case a copy of the notification with that of the endorsed plat * * * * * * *

Claims embraced by certificates Nos. 19, 20, 68, 69, and 67, embraced by this abstract, have been rejected, as you will perceive, because of their embracing in part land occupied as town sites, which, as decided by the Secretary of the Interior, a copy of whose decision was sent you on the 24th inst., are not subject to donation claims. Should the residence of the settler be within the town the claim fails to its whole extent, it requiring both
69 residence and cultivation to secure a valid right. Should it not, the claimant cannot receive a certificate for the agricultural part of his claim until after the proper authorities have entered so much of the town site and the adjoining land as they are entitled to under the act of 1844.

In the case of No. 19, also, Mr. McClane does not prove continuous residence, he having been absent for nearly nine month in California, during which it is not shown that his household, if he had any, remained on the land, cultivating it for his benefit. * * * * *

I am, very respectfully, your ob't serv't,

JOHN WILSON, *Commissioner.*

CHARLES K. GARDENER, *Sur. Gen'l Oregon, Oregon City, Oregon.*

70 LAND OFFICE, OREGON CITY, *March 4th*, 1862.

We, the register and receiver of land office at Oregon City, Oregon, hereby certify that the foregoing is a correct copy of the original notification, proof, and certificate of John B. McClane, on file in this office, with that portion of the letter of the Commissioner of General Land Office relating to said McClane's land claim, and that these are the entire papers relating thereto, as appears by the records of this office.

W. A. STARKWEATHER, *Register.*
W. L. MATLOCK, *Receiver.*

71 GENERAL LAND OFFICE, *Dec.* 1*st*, 1859.

GENTLEMEN: In the case of the conflicting claims of John D. Boon and John B. McClane this office decides that Oregon donation certificate No. 19, in favor of John McClane, is correctly issued, and that said McClane is entitled to a patent for his donation claim, saving and reserving therein any right which may exist in the town of Salem to any portion of the tracts.

You will please advise all parties in interest of this decision.

You are requested to acknowledge the receipt of this, and at the same time to advise this office whether any claim is set up by the town of Salem to any portion of the land covered by the claim of McClane.

Very respectfully, your ob't serv't,

S. S. SMITH, *Commissioner.*

REGISTER AND RECEIVER, *Oregon City, Oregon.*

72 The United States of America to all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office of the United States a certificate numbered nineteen, of the surveyor general of public lands in Oregon, whereby it appears that under the provisions of the act of Congress approved the 27th day of September, 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands," the claim of John B. McClane and his wife, Helen C. McClane, of Marion County, Oregon Territory, Notification No. 45, has been established to a donation of one section or six hundred and forty acres of land, and that the same has been surveyed and designated as claim No. 43, and as parts of sections fourteen, fifteen, twenty-two, and twenty-three, in township seven south, of range three west, according to the official plat of survey returned to the General Land Office by the surveyor general, being bounded and described as follows, to wit: Beginning at a point on the bank of the Willamette River twenty-two chains west and six chains and forty-eight links north of the corner to sections fourteen, fifteen, twenty-two, and twenty-three; thence east sixty-six chains and fifty-four links; thence south nineteen de-

73 grees west, forty-one chains and twenty-three links; thence north seventy-one degrees west, sixteen chains and ninety links; thence south nineteen degrees west, nineteen chains and seventy-eight links; thence south seventy degrees thirty minutes east, seven chains and sixty links; thence south nineteen degrees west, twelve chains and ten links; thence north fifty-nine degrees thirty minutes west, thirty-two chains and sixty links; thence north eight degrees thirty minutes west, eight chains and fifty-eight links; thence north forty-nine degrees west, seventeen chains; thence with the meanders of Willamette River north twelve degrees east, three chains and sixty links; north seventeen degrees thirty minutes east, nine chains; north twenty-five degrees east, five chains; north three chains and sixty links; north fifteen degrees east, three chains and ten links; and north twelve degrees east, six chains and fifty links, to the place of beginning, in the Willamette land district, Oregon Territory, containing two hundred and ninety-eight acres and fifty-nine hundreths of an acre:

Now, know ye that the United States of America, in consideration of the premises and in conformity with the provisions of the act aforesaid, have given and granted, and by these presents do give and grant, unto the said John B. McClane the south half, and unto his wife Helen C. Mc-

74 Clane, the north half of the tract of land above described, to have and to hold the said tract, with the appurtenances, unto the said John

B. McClane and his wife, Helen C. McClane, and to their heirs and assigns forever, their respective portions as aforesaid.

In testimony whereof, I, James Buchanan, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this eighteenth day of December, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fifth.

By the President: JAMES BUCHANAN,
By J. B. LEONARD, *Secretary.*

[SEAL.] J. W. GRANGER,
Recorder of the General Land Office.

Recorded vol. 1, page 465.

STATE OF OREGON, *County of Clackamas, ss:*

I, James Winston, clerk of the circuit court of the State of Oregon for the county of Clackamas, do hereby certify the foregoing to be a full,
75 true, and correct copy of the patent issued by the United States to John B. McClane and his wife, Helen C. McClane, as now submitted in evidence in the case of John D. Boon *vs.* John B. McClane, tried before said court at its March term, A. D. 1862.

In witness whereof, I have hereunto affixed my signature and the seal of said court this 8th day of March, A. D. 1862.

[SEAL.] JAS. WINSTON, *Clerk.*

Filed March 8th, 1862.

JAS. WINSTON, *Clerk.*

76 JOHN D. BOON, comp't,
vs.
JOHN B. MCCLANE, def't. } In chancery.

Thomas J. McCarver, a witness introduced at the trial on the part of the defendant, being duly sworn, says:

I am about 29 years of age, and reside in Oregon City. In March, 1849, I was in Sacramento City, California, also in the latter part of Feb. of that year. I do not know of any elections being held there at those times. I think I should have known if any elections had been held. Mr. Joseph Ralston was there at the time. He stayed at the store the most of the time while in the city.

Cross-examination.

I went from the mines to Sac. City about the tenth or 12th of February, 1849. In April thereafter I went back to the mines. I do not think there was an election in Sac. City for alcalde during that time. I would not swear positively that there was no election for alcalde at Sutter's Fort during that time, but I do not think there was. I was about sixteen years old at that time.

T. J. McCARVER.

77 Joseph R. Ralston, called as above, being duly sworn, testifies: I am thirty-six years old, and reside in Oregon City. I was in Sacramento City, California, in the latter part of February, 1849. I left the mines on or about the 25th and reached the city on one of the last days of the month. I was in the city about three days. I saw Mr. McClane there on the day we started for San Francisco. My impression is that McClane arrived in Sac. City after I did, but I am not positive about that. I was not

acquainted with him before that time. There was no election in Sac. City that I know of while I was there. If there had been an election while I was there I think I should have known it. There was but two or three houses there. There were a good many trading places there, they were in tents; the place was small. McClane and I were together all the time after we left Sac. City until we arrived in San Francisco. We came together also to Oregon and arrived here about the 20th of April. I do not know that we boarded at the same house in San Francisco, but I saw him most every day while we were there. When McClane left Sacramento City we started to come to Oregon. We were delayed at San Francisco because we could not get a passage up.

Cross-examined.

I do not remember to have seen McClane in Sac. City until the afternoon of our leaving there, and then on the bank of the river near the boat-
78 landing. I do not think I had met him in Cal. before that time. I think there is a Sacramento County in Cal. now, but I do not think there were any counties in California at that time. I paid no attention to the local politics of Sac. City while I was there. I do not know that I thought of politics once. I never saw an alcalde or other local officer that I know of while I was there. Where I was we administered our own law.

J. R. RALSTON.

Hugh Burns, called as above, being duly sworn, says: I am about 54 years of age, and reside in this county. In March, 1849, I was in San Francisco. Mr. McClane was there at that time. I arrived there about the 12th or 13th of March from Oregon. I went to board at Mr. West's, and I there met Mr. McClane. We remained there until the last day of March, I think. Mr. McClane could not get a passage up until that time. We came to Oregon together and occupied the same state-room. We arrived in Baker's Bay about the 13th of April, and reached Portland five or six days afterwards. Mr. Joseph R. Ralston was a passenger with us in coming up to Oregon. Mr. McClane bought a stock of goods in San Francisco and brought them up with him. I supposed that he would take goods to Salem because
79 that was his home. He purchased the goods for business, I think.

H. BURNS.

The foregoing evidence was taken in open court and reduced to writing by me upon the hearing of the above-entitled cause. Said witnesses were introduced by the defendant and cross-examined by the comp't.

March 5th, 1862. A. E. WAIT, *Judge.*

Filed March 5th, 1862.

JAS. WINSTON, *Clerk.*

80 Circuit court, State of Oregon, Clackamas Co.

JOHN D. BOON
vs.
JOHN B. McCLANE.

John Ford, being first duly sworn on behalf of the defendant, deposes and says that I am forty-four years old, and know the parties to the suit, John D. Boon and John B. McClane, and know the claim in dispute, and reside in Marion County, about four miles from North Salem, and resided there since 1844.

Ques. 1. State, if you know, who occupied and claimed the land claim in dispute in 1844.

Ans. McClane and Judson claimed it.

Ques. 2. State how long and until what time they both claimed and occupied it.

Ans. I cannot state; I believe Judson went away in 1852.

Ques. 3. How long did McClane continue to occupy and claim said claim after 1846?

Ans. He was there in the fall of 1846 to the fall of 1855, I believe.

Ques. 4. State to what extent McClane cultivated said claim, if at all.

Ans. He had a small garden, an orchard, some trees set out, about
81 seven or eight acres. I first observed a garden there back of the house in 1847 or 1848. I could not say the orchard was there before 1850.

Ques. 5. State, if you know, anything of Mr. McClane's intention to return to Oregon when he went to California in the fall of 1848.

Ans. I did not hear him say anything about it.

Ques. 6. State, if you know, what was the general understanding, if any, in community in relation to his intention to return.

(Objected to by plaintiff as incompetent, irrelevant, and indefinite.)

Ans. I do not know that I can answer that; he did return.

Cross-examination.

Ques. 7. Will you swear that McClane individually either cultivated or procured the cultivation of any part of that claim up to 1850?

Ans. He was there doing business, living there just as any other man on a claim, did or had it done, had men hired.

82 Ques. 8. Will you swear that McClane individually did any cultivation or individually hired anybody else to cultivate any part of said claim for himself up to 1850?

Ans. I think him and Mr. Judson were together a part of the time; I think Judson was at the mouth of the river before 1850. My understanding was McClane and Judson were partners in the claim as long as Judson and McClane were together; they had it done, I supposed. I do not know any other way.

Ques. 9. Will you swear that in 1847 Judson and McClane, or McClane made any garden on the claim, or set out any fruit trees, or had it done, of your own knowledge?

Ans. They had a garden spot worked there that year. I cannot say about fruit trees.

Ques. 10. Did not Henry Hawkins that year have the mills rented and make the garden?

Ans. He had it rented; I do not know what year. I do not know whether he rented it or was hired by the month.

Ques. 11. Was there more than one garden about the premises that year?

Ans. I could not say; there were other persons living there.

83 Ques. 12. Will you swear that they, Judson and McClane, cultivated that garden or had it done that year, of your own knowledge?

Ans. There was a garden spot there; I do not know whether they worked it or had it done.

Ques. 13. Will you swear that in 1848, Judson and McClane made any garden or cultivation on the claim, or set out any fruit trees or had it done, of your own knowledge?

Ans. I do not know that they set out any fruit trees; I think the garden spot had grown larger. In 1848 the garden was there; it was worked; I reconed they had it done.

Ques. 14. Was McClane there in the spring of 1848, at a time to make garden?

Ans. I think he was, I was not sure.

Ques. 15. Will you swear that in 1849 Judson and McClane made any garden or cultivation on the claim, or set out any fruit trees or had it done, of your own knowledge?

Ans. I am not certain that Judson was there. I do not think McClane was there in the spring. I do not know when he got back in 1849.

84 I think Judson was there in the spring. I do not recollect of any fruit trees there in that year.

Ques. 16. When did McClane become a married man?

Ans. I believe it was in 1849.

Ques. 17. Up to that time what was the nature of his residence upon that claim, that of a householder or boarder?

Ans. I am not sure. He lived in the house where Mr. Boon now lives. I do not know whether he hired his board or not. I mean by living, he staid there.

Ques 18. Will you swear that in 1846 or 1847, that McClane owned one half of the claim in dispute, of your own knowledge?

Ans. He said he did; I understood so from both him and Mr. Judson.

Ques. 19. What did Judson say about that and when?

(Objected to by defendant as irrelevant.)

Ans. I have heard them both speak often about being partners in the claim.

Ques. 20. Will you swear that it was not in reference to the partnership in the mill only of which Judson spoke?

(Objected to by defendant as irrelevant and incompetent.)

85 Ans. He did not mention the mill alone.

Ques. 21. Do you know whose name this claim was held in from 1846 to 1851?

Ans. I do not know.

Examination in chief resumed.

Ques. 22. Where you say in your last answer you do not know in whose name the claim was held in 1846 to 1851, what do you mean?

Ans. I do not know whose name it was recorded in is what I mean.

JOHN FORD.

STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 17th day of February, 1862, between the hours of ten o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 17th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

86 Witness fees, 1 day..... $1 50

Justice's fees:

11 folios..... $2 75

1 certificate..... 1 00

3 75

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

87 Circuit court, State of Oregon, Clackamas Co.

JOHN D. BOON
vs.
JNO. B. MCCLANE.

John B. Keizer, being first duly sworn of the part of the defendant, deposes and says that I am thirty-seven years old, and know the parties to the suit, John D. Boon and Jno. B. McClane, and know the land claim in dispute. I have resided in Marion County about eighteen years, and live from North Salem two and one half miles.

Ques. 1. State, if you know, who occupied and claimed the land claim in dispute in 1845 and 1846.

Ans. Mr. McClane, in 1846.

Ques. 2. How long did Mr. McClane continue to occupy and claim it?

Ans. It was called his claim from the time he bought, in 1845 or 1846, and he lived on it until he went to the States, except when he was in the Cayuse war, 1847 or 1848. Also in the fall of 1848 he went to California to the gold mines.

Ques. 3. State what you know, if anything, in relation to Mr. McClane's intending to return to Oregon when he started to California in the fall of 1848.

88 Ans. It was my understanding he would come back. I do not know whether I heard it from him or somebody else. I do not know whether I heard it at all. That was the general understanding in the neighborhood. I think the only reason I thought so was that the place and mills were called his while he was gone.

Cross-examination.

Ques. 4. Who held and claimed that claim from 1845-'46 to 1853?

Ans. McClane claimed it and lived on it.

Ques. 5. Who did McClane buy the claim from?

Ans. The claim, I think, belonged first to the Methodist Mission. I cannot say who he bought it from. I do not know whether he bought all the claim or not. He bought the possessions and went into the house.

Ques. 6. Was no one else interested in the purchase of the claim or possessions except McClane?

Ans. I could not say. Judson was concerned there a while in the mill. Whether he was concerned in the claim, I do not know.

Ques. 7. Was the claim ever called Judson and McClane's claim during that time?

89 Ans. I do not know but that it was.

Ques. 8. How did you know that McClane purchased that claim?

Ans. I heard that he bought the claim. I saw him there in possession, in the house. I think Judson and Dr. Wilson were concerned in the mills before McClane bought, perhaps in the claim. I do not know whether Willson and Judson were concerned in it before the Methodist Mission sold it or not.

Ques. 8. What did McClane give for the claim?

Ans. I do not know what he gave for it. My understanding was that he got it on credit.

Ques. 9. Will you swear that McClane bought the claim in 1846?

Ans. I will not. I was not at the sale. I have already told what I know about it.

Ques. 10. Will you swear further that even he bought an interest in the mills?

Ans. It was my understanding in 1845 or 1846, he bought the mills and the claim. I learned it from general talk.

Ques. 11. Will you swear that L. H. Judson was not the claimant of the claim in dispute during the years 1846, '7, '8, and '9, or portions of
90 them?

Ans. I would not swear it.

Ques. 12. Will you swear that J. B. McClane was claiming and occupying the said claim for himself and for his wife during said period from 1846?

Ans. I do not know for what use he was claiming. I do not know of his claiming it for anybody else.

Ques. 14. In whose name, if you know, was that claim recorded during that period?

Ans. I do not know.

Ques. 15. Was L. H. Judson residing upon said claim during any of said period, from 1846 to 1850, and exercising ownership and control in any way over the same?

Ans. Judson was there in the winter of 1849, while McClane was gone to California, and saw him there often before. I think Judson was keeping boarding-house, and do not know of anything he was doing in connection with the claim or mills. He was there building a boat to go to Clatsop.

J. B. KEIZER.

91 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 14th day February, 1862, between the hours of nine o'clock a. m. and four o'clock p. m. of said day, in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 14th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Renter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

Witness fees:

2 days	$3 00
Mileage, 8 m'ls	80
	3 80

Justice's fees:

8 folios	$2 00
1 certificate	1 00
	3 00

Filed Mar. 3rd, 1862. JAS. WINSTON, *Clerk.*

92 Circuit court, State of Oregon, Clackamas County.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

L. F. Grover, being first duly sworn on behalf of the defendant, deposes and says that I am thirty-four years old. Know the parties to the suit, Jno. D. Boon and Jno. B. McClane, and know the land claim in dispute, and reside in Salem.

Ques. 1. State what office, if any, you held in Marion County, Oregon, on the 29 day of December, 1851.

Ans. I held the office of deputy clerk of the probate court, which was then the county court, the clerk being ex officio recorder.

Ques. 2. Look upon the paper annexed to this deposition marked A. State what it is.

Ans. This a certified copy of a record made by me on the 29th day of December, 1851, acting as deputy clerk of the probate court, Marion County, Oregon.

Ques. 3. State at whose instance you recorded the document of which the paper hereunto annexed marked A is a copy.

Ans. At the instance of Jno. D. Boon, I think.

Ques. 4. State, if you know, who executed the original document as
93 recorded by you.

Ans. Jno. B. McClane and wife.

Ques. 5. Did you or did you not at any time, in connection with others, offered to purchase the land claim in dispute of Jno. B. McClane? If so, with whom, at what time, and at what price?

Ans. There was an effort at one time made by Benj. Simpson, Jno. D Boon, and myself to purchase the land claim in dispute of John B. McClane. It was, I think, a short time before McClane went to the States in 1853. We offered him twenty thousand dollars for the claim. He asked thirty thousand dollars. We offered twenty-two thousand dollars afterwards. He then came down in his price to twenty-five thousand dollars. We were unable to get any nearer a bargain, and the matter dropped.

Ques. 6. Do you know of the sale by McClane to J. L. Parrish and others of the mills situated on said claim? If so, state whether the offer to purchase said claim, concerning which you have testified, was made before or after the sale of said mills.

Ans. I knew the fact of the sale of those mills. I drew the writings of conveyance. This offer to purchase was after the sale of the flouring
94 mills, and was for the balance of McClane's interest in the claim.

Cross-ex.

Ques. 7. Do you know what those mills sold for?

Ans. Fifteen thousand dollars; to Beers, Parrish, and Savage.

Ques. 8. State if you know of any sale of those mills, or a portion of them, since said sale to Beers, Parrish, and others. If so, when and what rate?

(Objected to by McClane as irrelevant and incompetent.)

Ans. Mr. Beers did soon after this purchase, which was one third interest in the mills, which was five thousand dollars, and his share was sold by the administrator of his estate to pay debts. The exact time of the sale I cannot now recollect. I think it was 1855. At a rate less than half of the cost. My impression it was nineteen hundred dollars.

Ques. 9. You have stated who executed the writings annexed to your deposition, and was a witness to them. Were they not given in lieu of other writings?

95 Ans. There were other writings there, but what their particular character I cannot state. I was applied to to draw these writings after one or two other attorneys had drafted papers for the parties, which papers were present and unexecuted, I think. I knew Boon had Judson's bond for some of these lots. They did comprise all the lots contained in the papers annexed. My impression is that there had been a contract between Judson and Boon, or between Judson, McClane, and Boon, for some of these lots; perhaps two or three. For this there was some writings. Writings in those days were informal. I cannot state what they were. As to the balance there was no writings.

Ques. 10. At or about the time of executing these papers by McClane and wife were not the original papers or writings to Boon given up by Boon to McClane and these taken?

Ans. I could not state distinctly. My impression is very indistinct about papers between McClane and Boon, and believe these papers were the final adjustment between the parties.

L. F. GROVER.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. G. WILSON, *for Boon.*
J. B. McCLANE.

96 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 25th day of February, 1862, between the hours of ten o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 25th day February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees, 1 day	$1 50
Justice's fees, 9 folios	$2 25
1 certificate	1 00
	3 25

97 A.

This indenture, made this 29th day of December, A. D. 1851, between John B. McClane and Helen McClane, his wife, of the town of Salem, in the county of Marion and Territory of Oregon, of the first part, and John D. Boon, of the county and Territory aforesaid, of the second part, witnesseth, that the said McClane a long time ago, to wit, before the 27th day of September, 1850, for and in consideration of several large sums of money before that time paid to the said McClane by the said Boon, the receipt whereof is hereby acknowledged, did bargain, sell, and agree to convey unto the said Boon all his right, title, and interest in and to certain lots in the town of Salem, in county and Territory aforesaid, numbered and described as fol-

lows, to wit: Nos. one, (1,) two, (2,) three, (3,) four, (4,) and all of five, (5,) on the island on which said Boon now lives, and six, (6,) seven, (7,) eight, (8,) and nine, (9,) in block No. (29) twenty-nine, reserving all water privileges appurtenant to said lot to said John B. McClane, his heirs and assigns forever.

Now this indenture witnesseth that said John B. McClane and Helen McClane, his wife, in pursuance of said agreement, do hereby, for themselves, their heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said Boon, his heirs and assigns, by these presents, in manner and form following, that is to say, that they, the said John B. McClane and Helen McClane, his wife, their heirs, executors, and administrators, and assigns, or some one of them, shall and will make, execute, and deliver unto him, the said Boon, good and sufficient deed or deeds of title in fee simple to the hereinbefore mentioned lots as soon as they, the said John B. McClane and Helen McClane, his wife, have obtained title to the same as part of the claim on which they now reside, either by patent, donation, or purchase from the government of the United States, or from any other person or persons in any manner whatever; and they, the said John B. McClane and Helen McClane, his wife, further covenants and agrees that they will not dispose of the possessory right to said claim on which they now reside, either by bargain, sale, gift, or otherwise, without reserving to the said Boon his first and lawful right in and to that certain portion thereof heretofore mentioned, but that they will use due diligence and lawful means to obtain title to the aforesaid claim in manner and form as aforesaid, and that they will warrant and forever defend the said premises unto the said John D. Boon, his heirs, executors, administrators, and assigns forever, by these presents.

98

In witness whereof, we hereunto set our hands and seals this 29th day of Dec., 1851.

JOHN B. McCLANE.
HELEN C. McCLANE.

Witness to the signature of John B. McClane:
L. F. GROVER.

Recorded December 29th, 1851.
L. F. GROVER, *D. Clerk, Probate Court, M. County.*

99

Know all men by these presents that we, John B. McClane and Helen McClane, of the town of Salem, County of Marion, and Territory of Oregon, are held and firmly bound unto John D. Boon, of the town, county, and Territory aforesaid, in the sum of two hundred thousand dollars, to be paid to the said John D. Boon, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and assigns, and every of them, firmly by these presents. Sealed with our seals and dated this 29th day of December, A. D. 1851.

The condition of this obligation is such that if the above-bounden John B. McClane and Helen McClane, their heirs, executors, and administrators, and every of them shall and do in all things well and truly observe, perform, fulfill, and keep all and singular the covenants, grants, conditions, clauses, and agreements whatsoever, which on the part and behalf of the said John B. McClane and Helen McClane ought to be observed, performed, fulfilled, and kept, comprised and mentioned in a certain indenture bearing even date herewith and made or mentioned to be made between the said John B. McClane and Helen McClane of the first part, and said Boon of the second part, according to the purport, true intent, and meaning of the same, then

the above obligation to be void, but if default be made in any of the cases aforesaid then to be and remain in full force and virtue.

100 In witness whereof, we have hereunto set our hands and seals this 29th day of December, A. D. 1851.

J. B. McCLANE. [SEAL.]
H. C. McCLANE. [SEAL.]

Witness to the signature of John B. McClane:
L. F. GROVER.

Recorded, Dec. 29, 1851.

L. F. GROVER, *Deputy Clerk, Pr. C. M. Co.*

STATE OF OREGON, *County of Marion, ss:*

I, N. T. Caton, clerk of the circuit court of the State of Oregon for the county of Marion, and recorder of deeds for the county aforesaid, do hereby certify the foregoing and annexed are true copies of the original thereof, as appears of record in Book of Bonds and Deeds, pages 35, 36, and 37, now on file in my office; and I further certify that I am the lawful custodian of the records aforesaid.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court this the 25 day of February, A. D. 1862.

N. T. CATON, *Clerk of said Court.*

Filed March 3d, 1852.

JAS. WINSTON, *Clerk.*

101 Circuit court, State of Oregon, Clackamas Co.

JOHN D. BOON
vs.
JNO. B. McCLANE.

Wm. H. Rector, being first duly sworn on the part of defendant, deposes and says that I am fifty-five years old, and know the parties to the suit, John D. Boon and Jno. B. McClane, and am acquainted with the land in dispute.

Ques. 1. Where have you resided from 1845 to the summer of 1853?

Ans. About five miles from Salem.

Ques. 2. State, if you know, who occupied and claimed the land in dispute in North Salem from 1845 to 1853.

Ans. It was owned and occupied by a firm of the name of Judson & McClane from 1846 up to 1850, and after that by McClane. McClane spoken of as a member of the firm is the same McClane who is defendant to this suit.

Ques. 3. State if you know of said McClane cultivating any part of the land in dispute; and if so, how long?

Ans. There was some land in cultivation in connection with the house and a pasture. I do not know who cultivated it.

Ques. 4. State how you know McClane was a part owner in the

102 claim in dispute prior to the time of his becoming sole owner.

Ans. I had several conversations with the parties, Judson & McClane, about purchasing an interest in the mills. I learned from them they were the owners of the mill and claim. I learned this as early as March, 1846, and generally so reported.

(Objected to by plaintiff as incompetent and indefinite.)

Ques. 5. State the value of McClane's one half interest in the mills and land claim in dispute in the fall of 1848.

(Objected to by plaintiff as incompetent and immaterial.)

Ans. I prefer not to fix a price.

Ques. 6. State what you know, if anything, about McClane's intention to return to Oregon when he went to California in the fall of 1848.

Ans. I do not know. I heard him say what was his intention. My impression was he was like the rest of , going to get some gold. It was generally understood he was coming back.

(This answer objected to by plaintiff as incompetent, immaterial, and too indefinite.)

Ques. 7. What was the value of the land claim in dispute in 1853,
103 when Mr. McClane went to the States, exclusive of the mills and exclusive of the land occupied by Boon on Boon's Island, and mill site and claim supposed to contain 298 acres?

(Objected to by plaintiff as too general and indefinite.)

Ans. It was worth about eight thousand dollars.

Cross-examination.

Ques. 8. Had not other parts of that claim previous to 1853, been sold by L. H. Judson, Judson & McClane, to other persons besides those parts mentioned in the last question?

Ans. Yes, there had been a village laid out on it and numerous lots sold, and numerous buildings put upon it.

Ques. 9. In your valuation of the claim made in the last question in your examination in chief did you exclude town lots and parts of the claim so sold to others?

Ans. My valuation was based upon the question, supposing there was 298 acres, exclusive of the premises sold to others.

Ques. 10. In your answer to question 4, how came you to have any conversation with Judson & McClane about the entire land claim when
104 you desired only to purchase an interest in the mills and water power?

Ans. At the time of the conversation, while they said they were holding that claim in partnership, McClane said he was holding the Pugh claim under the provisional government. My conversation in reference to purchasing the Pugh claim was only with McClane.

W. H. RECTOR.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

105 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 14th day of February, 1862, between the hours of nine o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 14th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees, 1 day..... $1 50

Justice's fees, 6 folios..... $1 50
1 certificate..... 1 00
2 50

Filed Mar. 3d, 1862.

JAS. WINSTON, *Clerk.*

106 Circuit court, County of Marion, Clackamas Co.

JOHN D. BOON
vs.
JNO. B. MCCLANE.

and says that I am forty two years old; know the parties to this suit, John L. Westacott, being first duly sworn on behalf of the defendant, deposes D. Boon and Jno. B. McClane, and know the land claim in dispute between them.

Ques. 1. Did you ever hear Mr. Boon say anything in reference to his object in laying claim to said claim? if so, what and where?

Ans. About a month after Mr. Boon took possession of that claim he, Boon, told me that he did not intend to hold the claim for himself, but to keep others from jumping it, and when McClane came back he would give it up to him.

LOUIS WESTACOTT.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

107 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 18th day of February, 1862, between the hours of ten o'clock a. m. and one o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 18th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees, 1 day..... $1 50

Justice's fees, 2 folios..... $0 50
1 certificate..... 1 00
1 50

Filed Mar. 3d, 1862.

JAS. WINSTON, *Clerk.*

108 Circuit court, State of Oregon, Clackamas County.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

C. J. Durbin, being first duly sworn on behalf the defendant, deposes and says that I am thirty-nine years old, and know the parties to this suit, John D. Boon and Jno. B. McClane, and know the land claim in dispute between them.

Ques. 1. Have you at any time heard John D. Boon say anything in reference to his object in laying claim to said claim? if so, what and where?

Ans. In the fall of 1854, or spring of 1855, I heard him, Boon, and Mr. Wagnon talking about the rights of jumping claims, &c. They entered on to this claim in dispute. Mr. Wagnon asked Boon some questions. Mr. Boon made the reply that he did not take the privilege of jumping this claim, only to keep Mr. O'Riley from jumping it; that he had taken it to secure Mr. McClane and his rights, as he was absent; thought him, McClane, proper owner.

Cross-examination.

Ques. 2. Have you not offered in or near Salem to a person or per-
109 sons to bet money that McClane would win the suit and gain the claim?

(Objected to by def't as irrelevant.)

Ans. I did not.

Ques. 3. Did you not offer to bet with James Walker, at the race track in North Salem, about two years ago?

(Objected to by def't, on the same ground as the last question.)

Ans. I did not.

C. J. DURBIN.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

110 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, between the hours of ten o'clock a. m. and one o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 18th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees, 1 day	$1 50
Justice's fees, 3 folios	75
1 certificate	1 00
	1 75

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

111 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCLANE.

Samuel Penter, being first duly sworn on the part of defendant, deposes and says that I am forty-three years old, and live in Marion Co., and am acquainted with the parties to this suit, John D. Boon and Jno. B. McClane, and know the land in dispute. My place I live upon adjoins the land in dispute. I have lived on the claim since 1846. I have lived in Marion County since 1845.

Ques. 1. State, if you know, who occupied and claimed the land in dispute in 1845.

Ans. Judson and McClane.

Ques. Where did Mr. Judson live in 1845?

Ans. He lived on the South Salem claim, I believe; I cannot state positively.

Ques. 2. State, if you know, who occupied and claimed the land in dispute from 1846 to 1853.

Ans. I do not know of anybody but Judson and McClane. I do not know when Judson sold out his interest.

Ques. 3. How long did Mr. McClane reside upon the claim in dispute after 1845?

112 Ans. He was there until 1848, when he went to California and stayed about seven months; then he came back and staid until the spring of 1853, when he went to the States.

Ques. 4. State, if you know, whether he claimed to be the owner of the land in dispute, either in whole or in part, during that period.

(Objected to by plaintiff, after the question had been down and another question propounded.)

Ans. To the best of my knowledge he was owner in part until he bought out Judson's interest.

Ques. 5. State, if you know, the extent of his ownership before he bought out Judson.

Ans. I know they were doing business as equal partners in the mill and land claim. It was the general understanding in the community.

Ques. 6. State if you know whether or not that Mr. McClane cultivated the land in dispute between 1845 and 1853; and if yes, to what extent.

Ans. He cultivated a garden and orchard; an orchard all the time from 1850, and I think he had a garden every year; also had oats part of the time.

113 Ques. 7. State whether or not the cultivation of the claim has been more extensive since McClane went to the States in 1853 than while he occupied it.

Ans. I do not know that the fencing have been enlarged any; a few more trees have been set out, and some more improvements have been made on the homestead.

Ques. 8. State if you know with what intention, as to future residence, Mr. McClane went to California in 1848.

Ans. My understanding was that Mr. McClane was to return and get married and live upon the claim. One reason was I understood that he was coming back, was, I had a conversation with the woman he afterwards married, while he was in California, and she told me he was sending back money, and was coming back to marry her.

(Objected by plaintiff as incompetent and irrelevant as to conversation.)

Ques. 9. State, if you know, what was the general understanding in the community as to Mr. McClane's intention to return to the claim.

Ans. I do not know. I cannot state.

114 Ques. 10. State if you know whether or not Mr. McClane left his household and kitchen furniture and other property in his house, on the claim, when he went to California.

Ans. He left property in the house. I saw books and furniture there. They were McClane's.

Ques. 11. State, if you know, what was the value of Mr. McClane's one half interest in the claim and mills at the time he went to California.

(Objected to by plaintiff as incompetent.)

Ans. I do not think I can do it justice. I cannot answer.

Cross-examination.

Ques. 12. How long have you been absent from your claim since 1846?

Ans. Not quite four months, in California.

Ques. 13. Who was the claimant of the claim in dispute from about 1846 to 1850?

Ans. I am inclined to think that the claim under the provisional government was first recorded in L. H. Judson's name, so far as I know. I do not of any change being made in the record.

Ques. 14. Whose claim was that called up to 1850?

115 Ans. It was called Judson and McClane's claim. They had an interest in two claims. They sold one, the Pugh claim, before 1850.

Ques. 15. Did you understand, previous to 1849, from Jno. B. McClane or L. H. Judson, or both, that McClane was to take a claim of land up the Willamette River or elsewhere, and hold the same, and when he should have completed residence to entitle him thereto he, McClane, was to have a part of the claim now in dispute of L. H. Judson, and the claim held by McClane to become partnership property?

(The above question was objected to by defendants as incompetent and irrelevant.)

Ans. I understood that McClane was to take a claim somewhere after he sold the Pugh claim. I do not know about the residence. The claims were to be partnership property in equal shares, each was to hold their claim, and become equally interested in each. I heard them both speak about it; the last time about 1846, I think.

Ques. 16. Under that understanding who was to hold the claim in dispute, Judson or McClane?

Ans. Of course Judson was to hold it. Judson sold out his interest in the claim to McClane in 1851 or 1852.

116 Ques. 17. Up to the time that Judson sold out, in whose name was the claim in dispute held, L. H. Judson's or John B. McClane's?

Ans. I could say; I do not know of any change in the record.

Ques. 18. Do you mean to say, in your answer to question 6, that McClane had and cultivated a garden on the claim in dispute every year from 1845 to 1853?

Ans. He did every year except when he was gone to the Cayuse war and California; he did make a garden when returned from California.

Ques. 19. Where was this garden in 1846, which McClane cultivated?

Ans. It was where the orchard is, in the house lot; it is in the same enclosure where it is now; the garden was all the time in the same place.

Ques. 20. Previous to 1850 was any cultivation upon that claim made by Judson and McClane, or by whom?

Ans. All the cultivation made there, garden and all, previous to 1850 was made under the supervision of Judson and McClane.

117 Ques. 21. In 1847 did not Henry Hawkins make the only garden on the claim?

Ans. I cannot say who done the work; I know Judson and McClane were there; whether they hired men to cultivate it or not I do not know. I saw some oats there before Judson left; I do not know who raised them; I do not know I saw any after Judson left.

Ques. 22. State whether McClane took another claim under the understanding you have referred to.

(Objected to by def'd'ts as irrelevant.)

Ans. He did not take any more claims that I know of.

Examination in chief resumed.

Ques. 23. In your answer to question 16 where you say, "Of course Judson was to hold it," what do you mean?

Ans. Under the donation law a man would have to hold his claim in his own name. By a promise of an interest in another claim he would give one half of his own.

Cross-examination resumed.

Ques. 24. In your answer to question 10 do you mean to say that the house referred to was McClane's own house?

118 Ans. To the best of my knowledge it was McClane's house.

Ques. 25. Was it not upon the claim in dispute?

Ans. It was.

Ques. 26. Have you not sworn that McClane and Judson were equal partners in the claim, and that Judson did not sell out his interest to McClane until 1851 or 1852?

Ans. Of course I did.

Ques. 27. Then under that statement were they not equal owners of this house?

Ans. They were equal owners when they were partners.

Ques. 28. Were they not partners at and before the time McClane went to California?

Ans. They were.

Ques. Then were they not equal owners of this house when McClane went to California?

Ans. They were.

SAMUEL PENTER.

STATE OF OREGON, *County of Marion, ss:*

119 I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 14th day of February, 1862, between the hours of nine o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 14th day February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

The foregoing deposition was taken by consent and is to be used in both cases between said parties in Clackamas circuit court, subject to all legal objections as to admissibility, competency, relevancy, and materiality.

J. G. WILSON, *for Boon.*

J. S. SMITH, *Att'y for McClane.*

Feb. 14, 1862.

Witness fees:

2 days	$3 00
Mileage, 3 miles	30
	3 30

Justice's fees:

18 folios	$4 50
1 certificate	1 00
	5 50

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

120 Circuit court, State of Oregon, Clackamas Co.

JOHN D. BOON
vs.
JNO. B. MCCLANE.

David Leslie, being first duly sworn on behalf of the defendant, deposes and says that I am sixty-four years old; know the parties to this suit, John D. Boon and Jno. B. McClane, and know the land claim in dispute.

Ques. 1. State, if you know, who occupied and claimed the land claim in dispute in 1846.

Ans. Owing to my best recollection and knowledge, it was owned and occupied by partners, Judson & McClane.

Ques. 2. State, if you know, how long after 1846 Mr. McClane continued to occupy and claim said land.

Ans. I considered him to continue to own and occupy, with the exception of a temporary absence to California, until he removed to the States.

Ques. 3. Have you any knowledge in relation to Mr. McClane's cultivation of any part of said land claim? If so, state what you know during the period mentioned.

Ans. I know of McClane in 1846 and 1847 occupied the garden spot, and saw him work there, and saw him cultivating the garden. I cannot
121 say positively about the rest of the premises. I do not know of any cultivation after that. I was absent the next two years.

Ques. 4. State whether you know whether when Mr. McClane went to California he intended to return to said claim or not.

Ans. I considered he did; I so understood he intended to return. Shortly before his leaving for California I sold him a horse on credit, and took the note of Judson & McClane, and was to wait until McClane returned, in case he lived to return.

Ques. 5. State whether McClane said anything to you at the time of said sale in reference to his intention to return.

(Objected to by Boon as incompetent.)

Ans. He did express an intention to return; said he was going to the mines to try to make a raise to pay the debts of the firm, Judson & McClane, and I should receive my pay when he returned.

Ques. 6. State whether at any time you have heard Mr. Boon make any statement in reference to his object in laying claim to the land claim in dispute; if so, what and when?

Ans. In a conversation with him in his office, in the Island House,
122 I desired to know what his object was, and understood from him it

was not to prejudice Mr. McClane's title, but he had entered to hold the property against other parties, naming Mr. Riley as one, who had been a resident a number of years upon the premises. I understood Mr. Boon to say that the term of McClane's occupancy was doubted and the claim was liable to be jumped or entered by other parties. I understood him to say when McClane returned he should not contest his, McClane's, title, it was not his intention; he should only desire to be indemnified for costs or damages that would accrue; that he, Boon, had relinquished a claim he would be entitled to hold. I cannot fix the date; it was in the course of the summer of 1853, as nearly as I can recollect. Boon said he had property on these premises; it was to protect it.

(Objected to by Boon as incompetent in giving his understanding instead of the words.)

Cross-examination.

Ques. 7. How came you to take the note of Judson & McClane for your horse?

I understood Judson & McClane were partners, equally concerned in all their business transaction, and took the note accordingly.

Ques. 8. In answer to question 3 you stated that McClane occupied it 1846 and 1847, and cultivated it. Did he do so for himself or the firm of which you have spoken?

Ans. I do not know whether for himself or the firm.

123 Ques. 9. In your answer to question 2 you say "that you considered McClane to own and occupy the claim, with the exception of a temporary absence to California, until he removed to the States." Do you intend to say he did so for himself as his own claim, or what was your meaning?

Ans. I intended to say that he owned and occupied the claim.

Ques. 10. Did you not say that Mr. Judson was a partner with McClane in the claim and all he did during a portion at least of that time?

Ans. Probably I did.

Ques. 11. How could McClane own and occupy the claim when another was owning also?

Ans. Being an owner himself also.

Ques. 12. Do you undertake to say that Mr. McClane owned and occupied this claim for himself individually, or only as a partner equally interested with Judson?

Ans. I do not undertake to say any such thing; Mr. McClane owned and occupied the claim as an equal partner with Judson.

Ques. 13. What relation do you sustain to McClane or his family by marriage or blood?

124 Ans. I claim no relation of McClane; his wife is a neice of mine.

Ques. 14. Do you entertain any ill or unpleasant feelings towards Mr. Boon and his family, or have you done so since 1853?

Ans. None at all. I have received many kindnesses from him and should be glad to reciprocate them.

Ques. 15. What relation do you sustain to L. H. Judson or family?

(Objected to by McClane as irrelevant.)

Ans. My wife is said to be the sister of L. H. Judson.

Ques. 16. When did Mr. McClane return from the States?

Ans. I do not recollect.

DAVID LESLIE.

This deposition taken by agreement, to be used subject to the same con-

ditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

125 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 20th day of February, 1862, between the hours of ten o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 20th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees, 1 day	$1 00
Justice's fees, 10 folios	$2 50
1 certificate	1 00
	3 50

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

126 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

F. R. Smith, being first duly sworn on behalf the defendant, deposes and says that I am forty-three years old; know the parties to this suit, John D. Boon and Jno. B. McClane, and know the land claim in dispute.

Ques. 1. When did you first become acquainted with the land claim in dispute?

Ans. It was in the latter part of October, 1846.

Ques. 2. State, if you know, where Mr. McClane lived during that fall and succeeding winter.

Ans. He boarded in the fall with Morris, or Morrisson, in one end of the house where Mr. Boon now lives. Morris moved away in the fall or forepart of the winter. After he went Mr. McClane and some other men, who were running the mill for Craft, boarded themselves in the same room where Mr. Morris lived. Mr. Pringle moved into the upper part of the house in the forepart of the winter, and when the young men who were boarding themselves broke up, Mr. McClane boarded with Mr. Pringle until he left in the spring. Before Mr. Pringle came McClane slept in the same room that Mr. Pringle lived in afterwards. Mr. McClane, being proprietor, had a private room.

127 Ques. 3. State, if you know, who claimed the land claim in dispute at the time referred to in your last answer.

Ans. McClane.

Ques. 4. State how long after that time Mr. McClane continued to occupy and claim said claim.

Ans. I think it was until 1853, when he went to the States. He was away twice during that time—once to the Cayuse war and once to California.

Ques. 5. State whether or not Mr. McClane cultivated any portion of said land claim during that period. If so, to what extent?

Ans. All the time. He cultivated the land every year. I saw him making garden, orchard, moving fence, and fencing pasture.

Ques. 6. Where have you lived since the fall of 1846?

Ans. In Salem and the immediate vicinity.

Ques. 7. State whether you know anything concerning McClane's intention to return to said claim or not when he went to California in the fall of 1848.

Ans. It was visibly his intention to return. What was in his mind I cannot say. I had some business with him just before starting, and he stated to me he should be back as soon as he could. He was going to
128 mine; to be gone for a few months. He left his business with Mr. Judson. He referred me to him, or anything I wanted, with reference to the business between us.

(The above question objected to by Boon as relates to conversation with McClane as incompetent and inadmissible.)

Ques. 8. State if you know whether or not Mr. McClane, at the time he started to California, he left any household or kitchen furniture, or other personal property, in his house, on said land claim.

(Objected to by Boon as incompetent, as it presumed the house was his, and improvements.)

Ans. I do not know what he may have left in the house. I know of his having some property outside of the house. He had some appurtenances belonging to the mill; a waggon which was used about the mill for logging. I think there was quite a lot of hogs and other stock; I would not say positively. There was some hogs which had strayed off the claim when he came back. I don't know they were on the claim when he went away. These I remember; I killed some of them myself.

Cross-examination.

Ques. 9. What was done in the way of cultivation on that claim in the spring of 1847?

Ans. Making garden, arranging pastures, and building fences.

129 Ques. 10. What was done in cultivating there in the spring of 1848?

Ans. About the same as the last answer.

Ques. 11. Will you swear that McClane did or had done, for himself solely and personally, the cultivation, &c., as spoken of in the last two answers?

Ans. He did it, or caused it to be done. I know of no other person interested.

Ques. 12. Where was the garden made in those two springs referred to?

Ans. Back of the house spoken of, and was the only garden cultivated near those premises. It was all in one enclosure; there may have been some portions of it worked by other persons. He generally let his tenants have a portion of the garden.

Ques. 13. Was L. H. Judson, with whom you were acquainted, interested in any way in the premises cultivated, or the land claim in dispute, from October 1846 to 1853?

Ans. He was there from time to time, and report was that Judson and McClane were in partnership in building a mill somewhere down on Clatsop, and Judson was also concerned in the mills on the claim in dispute—
130 this was all a report—and that McClane was in control of everything on the claim in dispute. I cannot say that Judson was interested in the claim or not, or the premises cultivated.

Ques. 14. Will you swear that Judson did not claim the claim in dispute

from 1846 to 1850, and he did not hold the claim in his own name at that time recorded?

Ans. I could not say but what he did; I never heard anything to that effect. I never searched the records. I cannot say that Judson did not claim it. He may have had a half a dozen claims.

Ques. 15. Will you swear that Judson had no interest in it further than in the mills as stated?

Ans. I will not.

Ques. 16. Will you swear that from 1846 to 1850 McClane was sole owner in the claim in dispute?

Ans. To the best of my knowledge he was.

Ques. 17. Have you been examined as a witness in reference to the contest concerning the claim in dispute, previous to this time, between the same parties—in 1857, at Salem, before B. F. Bonham, esq.?

Ans. I have been.

131 Ques. 18. Were you asked in that examination this question, that, Was not L. H. Judson interested in the cultivation of this claim as stated?

Ans. I do not recollect; I presume I was.

Ques. 19. If you were what was your answer?

(Objected to by McClane as incompetent and inadmissible.)

Ans. I do not recollect.

Ans. Did you not answer as follows: "I don't know whether he was interested or not. I supposed he was interested as a partner in whatever McClane done there."

(Objected to by McClane as incompetent.)

Ans. I do not recollect. FABRITUS R. SMITH.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Sam uel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

132 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 20th day of February, 1862, between the hours of ten o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 20th day February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees:	
1 day	$1 50
Mileage four miles	40
	1 90
Justice's fees:	
12 folios	$3 00
1 certificate	1 00
	4 00

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

133 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

P. C. Keizer, being first duly sworn on the part of the defendant, deposes and says that I am thirty-four years old, and know the parties to the suit, John D. Boon and Jno. B. McClane, and know the land claim in dispute. I reside in Marion County, one mile from North Salem, and lived about seventeen years in the immediate neighborhood.

Ques. 1. State, if you know, who occupied and claimed the land claim in dispute the latter part of 1845.

Ans. Judson and McClane were the owners, to the best of my recollection.

Ques. 2. How long did they continue to occupy and claim it jointly?

Ans. I cannot state positively; it was until 1849 or 1850.

Ques. 3. Who occupied and claimed it after their joint occupancy terminated up to 1853?

Ans. Mr. McClane occupied it after that.

Ques. 4. Did Mr. McClane cultivated any portion of said claim from and after 1845? If so, to what extent, and how long?

134 Ans. To the best of my recollection the place was cultivated from about 1845 or 1846 up to 1853 by Judson and McClane together; to some extent during the time they were joint occupants, and afterwards by McClane every year, more or less.

Ques. 5. Was the cultivation during that period more or less extensive than since Mr. Boon occupied it?

Ans. I could not say; I think about the same.

Ques. 6. State if you know anything in reference to Mr. McClane's intention to return to Oregon or not when he went to California in the fall of 1848.

Ans. I cannot say; I do not know what McClane intended. I understood he was coming back to marry Mr. Judson's daughter; that was the general rumor in the settlement; I understood it from hearsay only.

(This answer objected to by the plaintiff as incompetent.)

Cross-examination.

Ques. 7. How do you know that Judson and McClane cultivated any portion of the claim in dispute as you have stated above?

135 Ans. To the best of my knowledge it was cultivated by them. I do not know who did the work or who paid for it. The only way I judge they did it they were living on the place. This claim was generally called Judson and McClane's claim up to the time they seperated.

P. C. KEIZER.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

STATE OF OREGON, *County of Marion:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 14th day of February, 1862, between the hours of nine o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination, was sworn to testify the truth, the whole truth, and nothing but the

truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 14th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees:

2 days	$3 00
Mileage, 4 miles	40
	3 40

Justice's fees:

5 folios	$1 25
1 certificate	1 00
	2 25

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

136 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

V. K. Pringle, being first duly sworn on behalf of defendant, deposes and says that I am fifty-seven years old, and know the parties to this suit, John D. Boon and John B. McClane, and know the North Salem claim, the land in dispute, and lives in Marion County.

Ques. 1. Where did you reside in the winter of 1846 and 1847?

Ans. The house where Mr. Boon now lives in, on the claim in dispute.

Ques. 2. Who put you in possession of that house?

Ans. Mr. McClane.

Ques. 3. Who occupied and claimed the land claim in dispute at that time?

Ans. I understood it was Judson & McClane as partners.

Ques. 4. State whether any one cultivated any part of said claim in the spring and summer of 1847; if so, whom?

Ans. I left the place in June. The garden was cultivated up to that time by Henry Hawkins and McClane. My family assisted McClane in cultivating his part of the garden. The garden was divided between
137 Hawkins and McClane. I remember being there after I left and hearing Mr. Hawkins say he cultivated his part better than McClane.

Ques. 5. Had you at any time dealings with the firm of Judson & McClane?

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. I had from the time I came in in 1846 to the spring of 1849.

Ques. 6. State, if you know, in whose name the business in connection with the North Salem mills and claim was done while McClane was gone to California.

Ans. Judson & McClane.

Cross-examination.

Ques. 7. Will you swear of your own knowledge that Judson & McClane claimed the North Salem claim in 1847, 1848, 1849, and 1850, or any of those years?

Ans. I know it from hearing both of them say it up to June, 1847, when I left. VIRGIL K. PRINGLE.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

138 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 17th day of February, 1862, between the hours of ten o'clock a. m. four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to tell the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 17th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees:

1 day	$1 50
Mileage, ten miles	1 00
	2 50

Justice's fees:

4 folios	$1 00
1 certificate	1 00
	2 00

Filed Mar. 3rd, 1862. JAS. WINSTON, *Clerk.*

139 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

James Force, being first duly sworn on behalf of the defendant, deposes and says that I am forty-five years old; know the parties to the suit, John D. Boon and John B. McClane, and know the land claim in dispute; resided in Marion from 1845 to 1852, excepting six months absent to California and six mo's of the time about eight miles from Salem; rest of the time in and near Salem.

Ques. 1. State, if you know, who occupied and claimed the land claim in dispute between the parties to this suit in 1845.

Ans. Some time in 1845, about August or September, Wilson & Judson had owned the claim, as I understood it. About that time Willson wanted to know if I did not want to buy out his interest there. I told him I did not. The next time he, Wilson, came down he said he had sold it to McClane. I supposed he, McClane, was in possession. He was living in the house; he had a room. This was in the fall of 1845. After that I saw him about there all the time, as any one would be in possession.

(Objected to by plaintiff, as far as it relates to Willson, as incompetent and irrelevant.)

140 Ques. 2. Who occupied and claimed said land claim after the time you first saw McClane in possession as above stated?

Ans. McClane was always about the mill, doing business. (McClane said he had bought the claim; it was better, he said, to be born lucky than rich. He said he had bought out Willson, and that is the way he owned the claim.) He was around there the spring of 1846. I saw McClane making garden back of the house. I do not know he had any other home. He continued to live there until 1852, when I went to the States, except when he was to the Cayuse war, and in California in 1848. The next spring I was living in the institute; that was the spring of 1847. I went down to the mill. I found him (McClane) near the same spot making garden; the place was cultivated. After that I saw him in the orchard with other persons. I do not know whether he was to work. I believe the place was cultivated from that time until 1852, when I went to the States; I supposed only by McClane or his order.

(The above answer is objected to by plaintiff which is in parenthesis as incompetent, improper, and inadmissible, and the last sentence is also objected to as incompetent and improper.)

Int. 3. State whether you know anything of McClane's intention to return to Oregon or not when he went to California in 1848.

141 Ans. I do not believe I heard him say anything about it.

Cross-examination.

Ques. 4. Was McClane solely interested in the mills and in said claim from 1845 to 1852?

Ans. I do not know that he was.

Ques. 5. Who claimed that claim during most of the time, or in whose name was it held?

Ans. I could not tell; I never saw the record.

Ques. 6. Who was interested in those mills and claim if McClane was not solely so?

Ans. I always supposed Mr. Judson was. I never heard of any particular change of Judson's interest until he went below. I do not know of any change at any time. It was after 1848—I can't tell the year—Judson went to Clatsop.

Ques. 7. Were the two instances of cultivation spoken of by you as done by McClane for his own interest, or was it done while Judson owned the interest you spoke of?

Ans. It was done while Judson had an interest there, if he had any, the way I understood it.

142 Ques. 8. When was the orchard spoken of by you set out on that claim?

Ans. Some was put out, I guess, in 1849, and rest I do not know when; but after that, probably the next year.

Examination in chief resumed.

Ques. 9. State what has been the annual value of the use and occupation of the south half of the land claim in dispute since 1853.

(Objected to by plaintiff as incompetent and inadmissable and improper, and too general. The objection to the question as to time of asking is waived by plaintiff.)

Ans. The house, orchard, and garden, exclusive of the pasture, would be fifty dollars a month, a great share of the time; from the fall of 1854 for five years would be fifty dollars per month. The remaining portion of the time thirty-five or forty dollars per month. The pasture was worth about forty dollars per month.

Ques. 10. State whether, during the period named, you have been acquainted with the usual rates of rented buildings and grounds in and about Salem.

Ans. I am to some extent. I have rented and hired some out.

Cross-examination resumed.

143 Ques. 11. When did you rent out any buildings?

Ans. In 1852. I have rented out none since. That was in South Salem. I have rented for my own use.

Ques. 12. Do you know the condition of the house on the disputed claim spoken of in 1854?

Ans. I do not know the condition of it.

Ques. 14. Upon what do you place your estimate, then?

Ans. Upon the size of the building and the grounds.

Ques. 15. How many fruit trees were there, and alive, before 1854?

Ans. I never counted them. I guess there were about two hundred trees. I do not know there were that many alive in 1854.

Ques. 16. How many are there now?

Ans. Between two hundred and fifty and three hundred, I should guess, without counting.

Ques. 17. Do you include in your estimate for rent the use of any other buildings than the dwelling-house, to wit, the stable, carriage-house, cow-shed, and woodshed?

Ans. I do not.

144 Ques. 18. How many acres are there enclosed in that pasture?

Ans. I should think fifty or sixty; there would be more rather than less, as the fence was before I went to the States. The pasture has been all the time wild grass.

JAMES FORCE.

STATE OF OREGON, *County of Marion*, ss:

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 17th day of February, 1862, between the hours of ten o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 17th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

This deposition was taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

Witness's fees: 1 day	$1 50
Justice's fees: 12 folios	3 00
1 certificate	1 00
	4 00

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

145 Circuit court, State of Oregon, Clackamas County.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

Wm. P. Pugh, being first duly sworn on part of the defendant, deposes and says that I am forty-three years old, and know the parties to the suit, John D. Boon and Jno. B. McClane, and am acquainted with the land claim in dispute, and have resided in Marion County, three miles from North Salem, since November, 1846.

Ques. 1. State, if you know, who occupied and claimed the land claim in dispute in 1846.

Ans. Judson and McClane.

Ques. 2. How long after 1846 did they occupy and claim it jointly?

Ans. I know there was a joint occupancy. I cannot tell when it terminated.

Ques. 3. How long after 1846 did Mr. McClane claim and occupy the said claim?

Ans. He occupied it, to the best of my knowledge, from November, 1846, until some time in 1853. I was absent in California one year, from September, 1849, to September, 1850.

(The foregoing question and answer was objected by plaintiff for incompetency and leading.)

Ques. 4. From whom did you buy your land claim?

146 Ans. From Judson and McClane. Judson negotiated the sale and received a part of the pay.

(The plaintiff admits this to be claim spoken of as the Pugh claim in other depositions in this case.)

Cross-examination.

Ques. 5. How do you know that Judson received a part of the pay for this claim?

Ans. I delivered it to him. I understood from Judson and McClane both the claim was sold as the property of Judson and McClane; and I gave my note to Judson and McClane for the balance due, after delivering some property to Mr. Judson. I did not give any of the pay to McClane.

Ques. 4. Who was the claimant of that claim in dispute from 1846 to 1850?

Ans. Judson and McClane.

Ques. 5. In whose name was that claim recorded?

Ans. I cannot tell; do not know whether it was recorded or not.

Ques. 6. Apart from what Judson and McClane may have told you, have you any means of knowing who was the claimant?

Ans. None but public rumor.

147 Ques. 7. In answer to question 3 in your examination in chief do you undertake to say that McClane claimed and occupied this claim in dispute himself from 1846 to 1853?

Ans. To the best of my knowledge, with the exception of the time he was in California and the Cayuse war, and what I state in my own answer to question 3.

Ques. 8. Did you not state in answer to question 4 (cross-examination) that Judson and McClane claimed this claim from 1846 to 1850?

Ans. I did.

Ques. 9. Did they claim it as a partnership claim?

Ans. That was my understanding.

Ques. 10. How do you reconcile your answer to said question 3 in ex. in chief with the answer to question 4 and 7 cross-examination?

Ans. My answer may be incorrect. It was Judson and McClane that claimed and occupied it from 1846 to 1850.

Examination in chief resumed.

148 Ques. 11. In your last answer do you mean to say that there was any period of the time between November, 1846, and 1850, that McClane did not claim the land in dispute?

Ans. I did not. I pretend to say he was a joint claimant.

WM. P. PUGH.

STATE OF OREGON, *County of Marion:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 14th day of February, 1862, between the hours of nine o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 14th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

Witness fees:

1 day	$1 50
Mileage, 8 miles	80
	2 30

Justice's fees:

6 folios	$1 50
1 certificate	1 00
	2 50

Filed March 3rd, 1862.

JAS. WINSTON, *Clerk.*

149 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

John Force, being first duly sworn on behalf of the defendant, deposes and says that I am forty-eight years old, and know the parties to this suit, John D. Boon and John B. McClane, and know the land claim in dispute between them. I have resided in Marion County since 1847, and live about two miles from North Salem.

Ques. 1. State, if you know, who first occupied and claimed the land claim in dispute between the parties to this suit.

Ans. First claimed by the Methodist Mission and occupied by their agents. I next claimed it myself by a purchase from the mission. I purchased what was called the mill property, about two (2) sections.

Ques. 2. State how long you held and what disposition you made of it.

Ans. I held possession about one month, in the year 1844. I sold to Dr. W. H. Willson and L. H. Judson.

Ques. 3. State how long W. H. Wilson held an interest in it, and what disposition he made of it.

Ans. In 1846 I presented a demand against Wilson and Judson to Wilson. He, Wilson, said he had sold to McClane his interest in the mill section, and reserved the east part of the original claim, nearly a section. Wilson's interest in the mill and mill section was one half; that was what he sold. Wilson and Judson told me so. It was perfectly understood by them all that McClane had bought one undivided half of the mill and mill claim.

(All this answer is objected to by the plaintiff as far as Wilson's statements and Judson's statements, as incompetent, irrelevant, and inadmissible.)

Ques. 4. State whether when you bought of the mission there was any undertaking on the part of the mission in any event to make title to the land. If so, what?

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. If the mission ever got a title from the government they were to make a title to me. This was verbal. There was no writing between us. There was an agreement that writings were to be drawn as soon as convenient.

Ques. 5. State if you know of any undertaking on the part of the mission to make title to any of the subsequent claimants.

Ans. When I sold out to Judson and Wilson, Mr. Geary, superintendent of the mission, said it was all right, and agreed to release me and take Judson and Wilson, and make a quitclaim deed to them, and give a bond for a deed, provisoed the mission ever obtained title from the United States.

Ques. 5. State when, if at any time, you first knew Mr. McClane's claiming an interest in the land claim in dispute.

(Objected to by plaintiff as incompetent and inadmissible.)

Ans. I think it was in July, 1846, when I presented that note. The note was for mill property. Wilson said Judson and McClane was to pay that note. I presented it to McClane; he said it was all right. He, McClane, said he had bought out Willson, and offered me any property they had.

(Objected to by plaintiff as to what Wilson and McClane said, as incompetent and inadmissible.)

Ques. 6. State whether Mr. McClane, to your knowledge, ever cultivated any portion of said land claim. If so, to what extent and where?

Ans. I think it was in the spring of 1848. He was making garden back of the house. I think I did some plowing for him. I am quite certain of it. McClane was superintending. It was back of the house where Mr. Boon now lives. It was called the mill house. When I passed there during the summer I saw him working in the garden occasionally; he might be pulling weeds or vegetables; and saw him hoeing. In 1849 Mr. Judson called upon me to do some plowing on the same piece of ground. He had the piece enlarged. I broke some new ground. When I was done he said, when McClane comes back we will pay you. Soon after McClane came back he, McClane, paid me. McClane continued to work about there just as I would or any one else, planted an orchard, and tended a garden, until he went to the States in 1853. I am not certain whether the orchard was set out in 1851 or in 1852. Some trees were put out in 1850.

Cross-examination.

Ques. 6. You say Wilson reserved the east part of the claim you got from

the mission, nearly a section. Were not he and Judson equal owners in the claim he bought of you?

Ans. I presume so. I understood so.

Ques. 7. What did Judson get as an equivalent for Wilson's reservation of that tract, if you know?

Ans. Wilson said it was in consideration of an advanced payment made to me by Wilson. One thousand dollars was paid to me, eight hundred dollars of which was paid by Wilson.

Ques. 8. In 1855 or 1856 did you not undertake to persuade one Mr. Jordan to move on the claim in dispute and advise him he could hold it?

(Objected to by defendant as irrelevant and incompetent.)

153 Ans. I did not.

Ques. 9. Has your deposition been taken in reference to the claim in dispute previous to this time, in November, 1857, by McClane?

Ans. It was.

Ques. 10. Was the previous question (8) asked you at that time.

(Objected to by defendant as irrelevant and incompetent.)

Ans. I did not advise him to go on to the claim. After he was on the claim I told him if the town site law did not cut McClane off it would cut Boon off, and all men living then where their buildings were standing.

Examination in chief resumed.

Ques. 11. How did Wilson pay you the eight hundred dollars spoken of in your cross-examination?

Ans. Three hundred dollars in the Oregon Milling Company stock at Oregon City, five hundred dollars in lots, and a house at Oregon City.

(Recalled by McClane for another question, by consent.)

Ques. 12. Do you know anything in reference to McClane's intention to return to the land claim in dispute when he started to California in the fall of 1848, or not? If so, state what you know and how you know it.

(Objected to by Boon as leading.)

154 This answer to question 12. He told me he was going to return. I approached him to buy his interest in the mills and claim. The day he started he told me he did not want to sell at all, he was going to the mines to get something to improve with.

(Objected to by Boon as incompetent and inadmissible, as being statements of McClane.)

JOHN FORCE.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 18th day of February, 1862, between the hours of ten o'clock a. m. and one o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 18th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees:

2 days	$3 00
Mileage, 6 miles	60
	3 60

Justice's fees:

11 folios	$2 75
1 certificate	1 00
	3 75

Filed March 3d, 1862. JAS. WINSTON, *Clerk.*

155 Circuit court, State of Oregon, Clackamas Co.

JOHN D. BOON
vs.
JNO. B. MCCLANE.

Leman B. Judson, being first duly sworn on behalf of defendant, deposes and says that I am thirty years old, and know the parties to this suit, John D. Boon and John B. McClane, and know the land claim in dispute.

Ques. 1. State whether you went to California in company with John B. McClane in 1848.

Ans. I did. We started the 15th day of September.

Ques. 2. To what part of the mining regions did you go?

Ans. To the American fork of the Sacramento River. And McClane remained there until the last days of February, 1849, and then started to go to Sacramento City. A few days after that I got a letter from him stating that he was going right on to Oregon.

(Objected to by Boon as regards information derived from letters and McClane's statements as incompetent.)

Ques. 3. State what you know, if anything, with reference to McClane's intention as to his future residence when he left Oregon in 1848.

Ans. He calculated to return to Oregon again. I know he calculated to come back as much as a man can know another's intention.

(Objected to by Boon as incompetent and inadmissible.)

156 Ques. 4. To what extent were you in company with McClane while he was in California?

Ans. I was with him all the time until he left in February, 1849.

Ques. 5. State whether or not there was any election in that part of California whilst you was there.

Ans. There was not. I do not know of any laws, except those made by the miners themselves in regard to their claims.

Ques. 6. State, if you know, where L. H. Judson lived from 1845 to 1853.

Ans. He lived at the mills in 1845, and in 1846 he lived in a little house on the south side of Mill Creek. He moved from this little house to the ranch in South Salem, in 1846. He continued to live there until in 1847. He moved then to Clatsop Plains, in the spring of 1847, and there remained until the fall, and then moved to the house where McClane then lived, and where Mr. Boon now lives, on the claim in dispute. He lived there until the month of June, 1849. He then went back to Clatsop County, and continued to live there until 1853. The little house spoken of was not on the claim in dispute. I helped run the line, and it run north of the house.

Ques. 7. State, if you know, where Jno. B. McClane lived during the same period.

157 Ans. He lived in the same house where Mr. Boon now lives

all the time, as well as I recollect. He may have boarded in some of those other houses on the mill premises a part of the time.

Ques. 8. State what you know, if anything, about Mr. McClane's cultivation of any portion of the claim in dispute.

Ans. He had a little garden then most of the time, and orchard, which was set out between the summer of 1849 and spring of 1851. I saw him making garden there in the spring of 1848. He and my father, L. H. Judson, had the ground plowed. They both worked it. I saw a garden there in 1849, and worked the garden for him during the spring and summer of 1849. I do not know of any further cultivation prior to 1850. I went away in the fall of 1849.

Cross-examination.

Ques. 9. Was not all of the cultivation spoken of by you done for or by Judson and McClane?

Ans. In the summer of 1849 it was for McClane's own use. Father had moved away. I did not work it very early. It was plowed and put in before I got home. Some time in the last days of May I got home from California. I supposed what he did prior to 1849, he did it for himself, as I understood it.

158 Ques. 10. How does it happen in 1848 Judson and McClane plowed and worked the garden together?

Ans. They hired the plowing, and it was paid for by both of them. I suppose McClane was keeping batch in one end of the house, and father was living in the other. I suppose they were both cultivating for their own use. McClane kept batch in the summer of 1848. He kept batch with other men just before that.

Ques. 11. When did you leave California to come home in 1849?

Ans. About the middle of April, and left San Francisco about the last days of April.

Ques. 12. Of your own knowledge, do you know where McClane was after leaving him in February until May?

Ans. I did not see him during those two dates.

Ques. 13. How far was you from Sacramento in the mines when McClane left you?

Ans. About fifty miles. At Hang Town or Dry Diggings.

Ques. 14. State what relation you are to McClane or his family.

Ans. He married my sister. I am the son of L. H. Judson.

LEMAN B. JUDSON.

159 This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
W. G. WILSON, *for Boon.*

STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before you and reduced to writing by myself, at Salem, in said county, on the 24th day of February, 1862, between the hours of ten o'clock a. m. and 4 o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 24th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees:

1 day	$1 50
10 miles	1 00
	2 50

Justice fees:

9 folios	$2 25
1 certificate	1 00
	2 25

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

160 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

Webley Hauxhurst, being first duly sworn on behalf of the defendant, deposes and says that I am fifty-six years old, and know the parties to the suit, John D. Boon and John B. McClane, and know the land claim in dispute, and lives in Salem.

Ques. 1. Have you ever heard John D. Boon, the claimant, say anything in reference to his object in attempting to hold the land claim in dispute? If so, state what and when.

Ans. Shortly after it was reported that he had jumped the claim I went into his store for my own satisfaction, and asked him privately about it. He said his object was to hold the claim for McClane to prevent O'Riley from jumping it.

Cross-examination.

Ques. 2. What reasons had you to tell McClane or other persons of a private conversation you had with Boon for your own satisfaction?

Ans. The reason is this, that I was a member of the same church with Mr. Boon. I thought it was my duty to tell. I felt hurt at the report that he had jumped another man's claim. When he told me he did not intend to jump it I thought it my duty to contradict it.

161 Ques. 3. How soon after Boon took the claim was this conversation?

Ans. I do not know. It was probably a year after McClane went away, and soon after Boon took the claim.

WEBLEY HAUXHURST.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 15th day of February, 1862, between the hours of ten o'clock a. m. and three o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn

to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 15th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees: 1 day	$1 50
Justice's fees: 3 folios	$0 75
1 certificate	1 00
	1 75

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

162 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

L. H. Judson, being first duly sworn on behalf of the defendant, deposes and says that I am fifty-two years old, and know the parties to this suit, Jno. D. Boon and Jno. B. McClane, and know the land claim in dispute. I have lived in Oregon about twenty-one years.

Ques. 1. State, if you know, who occupied and claimed in the land claim in dispute the latter of 1845.

Ans. It was claimed and occupied by Jno. B. McClane and myself.

Ques. 2. At what time and in what manner did Mr. McClane become interested in said claim?

Ans. He purchased the interest of my former partner, W. H. Willson, the latter part of September, 1845.

Ques. 3. What was the extent of the interest purchased by McClane from said Willson in said claim?

Ans. One undivided half of the claim and improvements thereon.

Ques. 4. Who went into the actual possession of said claim after said purchase, if any one?

163 Ans. McClane was the man who made his constant residence upon the claim.

Ques. 5. How long did Mr. McClane continue to reside upon said claim and claim the same?

(Objected to by Boon as incompetent, suggesting what has not been proven.)

Ans. McClane made his constant home on the claim from the time he purchased the one half interest therein until the latter part of March, 1853, during that period. In the winter of 1847 and 1848 he was absent to the Cayuse war about three months. And also from the middle of September, 1848, until the last of April, 1849, he was absent to California, and he claimed the same during the entire period named.

Ques. 6. State what you know, if anything, in reference to the cultivation of any part of said claim by Mr. McClane during the period named or any part thereof.

Ans. Mr. McClane as my partner always cultivated a portion of the garden on said premises every year while I remained about Salem. I was here during some portion of the cultivating season every year prior to 1850. I have no personal knowledge of any cultivation after 1849 until 1852. I had been absent during that period.

Ques. 7. State who, if any one, besides Mr. McClane cultivated said
164 garden in the summer of 1847.

Ans. Henry Hawkins, by an agreement with Judson & McClane, was allowed one half of the garden during that year, 1847.

Ques. 8. At the time Mr. McClane started to California in 1848 what were his intentions as to future residence? State, if you know.

Ans. He intended to return in a few months.

Ques. 9. State whether or not he left a partner in Oregon conducting partnership business in his name and for his benefit.

Ans. I was residing upon the claim at that time, and we were equal partners in the claim and all the property and business thereupon; the business was conducted in the partnership name, Judson & McClane, during his absence.

Ques. 10. State whether or not Mr. McClane, when he started for California, left any personal property on said claim belonging to himself individually; if so, what was it and when was it left?

Ans. He left his bedstead, table, some seats or chairs, all his cooking utensils, except what he took for camping, and some table furniture, also some partly worn clothing. All this property was left in the rooms in the
165 upper part of the mill house, except the table furniture, which he previously occupied; that is the same house where Mr. Boon now lives.

Ques. 11. State whether or not Mr. McClane left any personal property on said claim belonging to the partnership of Judson & McClane; if so, state what.

Ans. There was a band of hogs, there were thirty or more, also a log cart; I think there was one steer belonging to the partnership property. There was a considerable amount due upon the books for lumber sold, one half of which belonged to McClane.

Ques. 12. State whether during Mr. McClane's absence in California any contracts were made by you for the sale of any interest in said land claim; if so, in whose name were they made?

Ans. I made sale of two or more lots of land, also made a contract with W. W. Chapman for the sale of an undivided one third of the claim and all the improvements. In regard to the lots, I am unable to say in whose name the bonds were drawn, whether in my name or in Judson & McClane's. The contract with Chapman was drawn in the name of Judson & McClane, by L. H. Judson.

(Objected to by Boon as regards contract with Chapman.)

Ques. 13. State whether or not you received pay for any of the
166 parcels of land so sold by you during McClane's absence; if so, what disposition was made of the sum so received?

Ans. I received a part of the money for the lots during Mr. McClane's absence, and the remainder was paid to us after his return. All the money so received was the property of Judson & McClane, and so used.

Ques. 14. Were any sales of any portion of said land claim at any time made by you for your sole and individual benefit?

Ans. Never were any.

Ques. 15. Look upon this paper and state what it is and by whom executed.

Ans. This is one of the duplicates of agreement made and executed by L. H. Judson for Judson & McClane, at the date thereof, and W. W. Chapman.

Ques. 16. Look upon the paper marked A, and annexed to this deposition, and state what it is and in whose handwriting, if you know.

Ans. This appears to be a copy of the other paper; I should judge it to have been written by W. W. Chapman; I am somewhat acquainted with his handwriting. The signature is a copy of the original paper.

167 A.

This agreement, made this 4th day of April, 1849, between Judson & McClane and William W. Chapman, witnesseth, that the said Judson & McClane, for the consideration hereinafter mentioned, have this day sold, conveyed, and delivered to the said Chapman an undivided third part of the Salem Mills establishment, with the appurtenances thereunto belonging, including the interest in the proposed mill below the present mills, also one undivided third of the claim; the mill claim now held by Judson & McClane to be held and owned by the before said parties in partnership, and so improved and carried on.

In consideration whereof, the said Chapman agrees to purchase a certain claim on the Santiam River, being the claim formerly owned by Konhite, provided said claim can be purchased for not much exceeding $300, to be held by said Chapman for the benefit of the firm; and to discharge two payments of the purchase-money to the mission, not exceeding one thousand dollars, five hundred dollars thereof to be in September, 1850, and five hundred dollars in one year thereafter; and the said Chapman agrees to bear his proportional share of all other payments of principal and interest on the purchase-money not now due. It is further agreed between the parties that if said claim cannot be purchased as aforesaid, said Chapman shall pay into the partnership stock an equivalent to about three hundred dollars.

167½ In testimony whereof, we have hereunto set our hands this 4th day of April, 1849.

(Signed in duplicate.)

JUDSON & McCLANE,
By L. H. JUDSON.
W. W. CHAPMAN.

168 Ques. 17. State whether the copy marked A, and hereunto annexed, of the original, is an exact copy of the duplicate original now before you.

(Objected to by Boon as incompetent and inadmissible, and the introduction of said paper objected to.)

Ans. It appears to be one more name in the copy than in the duplicate original, in one place.

Ques. 18. Can you account for the difference?

(Objected to by Boon as incompetent and inadmissible.)

Ans. This duplicate original is the one I kept, the other W. W. Chapman retained; I believe this copy to be made from the duplicate original he kept; it is in his handwriting. I should judge there is an omission in the one I kept. It would neither make good grammar nor good sense without supplying that omission.

(Objected to by Boon as incompetent.)

Ques. 19. State whether at any time Mr. McClane kept batch on the claim in dispute; if so, when and where?

Ans. To the best of my recollection he always kept batch whenever he could not get a family to reside in a part of the mill house, with whom he could board. In the winter of 1846 and 1847 he, with several others, cooked and ate in his room in the mill house; I do not know how long. I think he kept batch before this time. He purchased a full set of table furniture

169 in the spring of 1848, of H. B. Breede. I think he used it in keeping batch that summer. When Henry Hawkins left the mill house in July, 1848, Mr. McClane purchased of Mrs. Hawkins a lot of choice fresh butter for his own use. Then he kept batch from that time until about the middle of August of the same year, when he came into the other part of the house and boarded at my table. What butter he had on hand, some syrup, and his table furniture, before spoken of, he brought into my rooms and used in my family.

Ques. 20. State, if you know, when Mr. Boon first came on the claim in dispute with his family.

Ans. About the 25th of January, 1846.

Ques. 21. For what purpose did he come there and where did he live?

Ans. He came to work for Judson & McClane in the mills. His family came to cook for us and our hands employed, and they lived in the mill house.

Ques. 22. How long did they occupy the mill house, and where did they go when they left it?

Ans. They lived in the mill house until spring; I think a little more than two months; then removed to the claim in Polk County, now occupied by Dice.

170 Ques. 23. When did they return to the claim in dispute, and where did they next live upon it?

Ans. Some time in the fall of 1847 Mr. Boon returned with his family to reside within the limits of the claim. He came to work in the mills as a subrenter under Henry Hawkins. He moved his family into a slab house, built and owned by Judson & McClane. This house was nearly on the site where Mr. Boon afterwards built a house for himself on Boon's Island.

Ques. 24. Did Mr. Boon pay rent for the use of said house? If so, to whom did he pay it?

Ans. My impression is that rent from Mr. Boon was due for that house up to the time that he purchased a house with a small piece of ground upon which it stood. All the rent we ever received for that house belonged to Judson & McClane. Henry Hawkins was a tenant of Judson & McClane's. Mr. Boon got the slab house from Judson & McClane.

Ques. 25. Did Mr. Boon at any time rent any other premises within the limits of said land claim? If so, what ones, and of whom?

Ans. I do not recollect of any other but what has been stated. He, Boon, Riley, and Kendall were subrenters under Henry Hawkins of the mills. Henry Hawkins had rented the mills of us. This subrenting by Boon

171 is the same as in a former answer.

Cross-examination.

Ques. 26. When did Boon buy that small slab house and premises on the island referred to?

Ans. Some time in the year 1848. I think he had a bond or conveyance.

Ques. 27. By whom was that bond or conveyance executed?

(Objected to by McClane as incompetent.)

Ans. To the best of my recollection it was by me. I do not know the sum. It was called the east part of Boon's Island. The bond was conditioned for to make a title. I do not know whether it was drawn in my name or Judson & McClane's; sometimes they were drawn in my name and sometimes in the name of Judson & McClane's.

Ques. 28. In 1848 and 1849 did the south line of the claim in dispute embrace lands on the south side of Mill Creek, near the mouth?

Ans. I think not. I think all the lands there were sold to Dr. Wilson before that time; I do not think the record of the claim lines were changed. I doubt whether they were ever changed at all.

172 Ques. 29. When were they sold to Dr. Wilson?

Ans. Some time in 1846 I sold to Dr. Wilson all the land lying on the south side of the creek below where Liberty street crosses, except a small piece, upon which a plank house Judson & McClane built, the one in which I lived a short time in the spring of 1846, near where Ramsey's shop is.

Ques. 30. State whether a bond or conveyance was given to Dr. Wilson for those premises by you.

Ans. I do not now recollect; my impression the bond was not given, as he calculated to take it in his own claim.

Ques. 31. State whether or not a bond or conveyance was not afterwards given to Wilson by you for those premises about the fall of 1849.

Ans. I could not recollect; it might have been done.

Ques. 32. State whether in 1846, about July, you sold to J. L. Parrish a piece of land belonging to the then claim of which the claim in dispute is a part; and if so, did you execute a bond or conveyance for the same to him?

Ans. Mr. Parrish bought a piece of land off of the claim in 1846 of about thirty-five acres. I supposed I gave him a bond or conveyance, as it was our uniform custom.

Ques. 33. Who executed that bond or conveyance?

(Objected to by McClane as incompetent.)

173 Ans. I think I did.

Ques. 34. Are you acquainted with Wm. H. Judson?

Ans. Yes.

Ques. 35. Did you not about the spring of 1860, or about that time, at your residence, near Vancouver, W. T., state to him that Logan, McClane's attorney, told you that you could not be a witness for McClane while you was interested in the land or claim, and that you had sold out to be a witness, or words to that effect?

(Objected to by McClane as irrelevant and incompetent.)

Ans. I never stated anything of that kind to Wm. H. Judson.

Ques. 36. At the same time and place did you not state or say to Wm. H. Judson that if McClane gained the suit, he was to give you or you was to have from him two thousand dollars, or words to that effect?

(Objected to by McClane as irrelevant and incompetent.)

Ans. I stated nothing of the kind.

Ques 37. Previous to that time, while you was residing at Clatsop, did you not state to, or in the presence of, Wm. H. Judson that you thought whichever side you was a witness upon, whether Boon or McClane,

174 would gain the suit, or words to that effect?

(Objected to by McClane as irrelevant and incompetent.)

Ans. I stated nothing of that kind.

Ques. 38. Are you acquainted with Samuel Parker?

Ans. I am.

Ques. 39. In the spring of 1848 or 1849 did you or did you not state to Samuel Parker that Mr. McClane held one half of the mills and one half of the mill privilege of the mills, and that McClane's interest was only one half of the mill and mill privilege to that mill, and that McClane did not own any of the land except a half of a small portion that belonged to the mill, or words to that effect?

Ans. I never made such a statement to Samuel Parker or anybody else.

Ques. 40. About the time W. W. Chapman was about to purchase a part of the mill property on the claim in dispute, about 1849, did you state to him that McClane was to take a claim, a timbered claim, for the benefit of the mills, that he had failed to take a claim until the best timbered claims were gone, up to the Willamette River, and McClane failed to take any claim, and you thought McClane ought not to have any of the claim in dispute?

(Objected to by McClane as irrelevant.)

175 Ans. I have no recollection of making any such statement, nor do I believe I did.

Ques. 41. At another conversation afterwards, near Mill Creek, did you not state to him, S. Parker, that McClane had been up the Willamette River to look for a timbered claim; that there was no claim there worth anything;

that he would have to make up the difference between the claims; that McClane owned one half of the mill with the privilege to the same; that you had promised to let McClane have one half the land claim in dispute, provided he, McClane, would take a timbered claim up the Willamette River, but that McClane failed to do so until a portion of the timber was taken off, and now if he took one he must make up the difference?

(Objected to by McClane as irrelevant and incompetent.)

Ans. All those statements are so much at variance with Mr. McClane's and my agreement, I deny ever having made them at all.

Ques. 42. In the latter part of June, 1849, at Milwaukie, Clackamas County, in a conversation with Samuel Parker, did you not state to him that McClane had purchased some property down at Clatsop, and that you were going down to improve it, and when he asked you if you expected to move down there, you said you thought you should, and when he asked
176 you if you had sold your claim up here, you said you had not nor did you think you would, as you thought too much of it, and would make it your home, or words to that effect?

Ans. I never saw Sam'l Parker at Milwaukie in June, 1849, nor never stopped there in that year. I did see him at Milwaukie in May, 1850. I told him I was improving, with a man on his claim, building a mill at Clatsop County; my family were down there, and had been for some time. I said when I had finished the mill and got agoing I expected to rent or sell the mill and return to Salem. That is all I recollect of saying to him.

Ques. 43. Are you acquainted with A. R. Stoughton?

Ans. I am.

Ques. 44. Previous to Mr. McClane's return from California, 1849, did you state to Mr. Stoughton that you claimed the claim in dispute, or words to that effect?

(Objected to by McClane as irrelevant and incompetent.)

Ans. I never said to S. R. Stoughton or any other person that I claimed that claim exclusive of Jno. B. McClane.

Ques. 45. About the time McClane returned from California in 1849,
177 at the mills on the mission claim now in dispute, Salem, Marion County, at the conversation where W. W. Chapman, A. R. Stoughton, and yourself were conversing, did you not state to or in the presence of A. R. Stoughton that McClane had nothing to do with the land claim, but the mill he owned one half; that McClane could only object to his, Chapman, being partner in the mill, not in the claim; that if Chapman, or any one, doubted McClane having no interest in the claim he could go to Oregon City and examine the records in the office, or Magruder's office, or words to that effect?

Ans. I did not.

Ques. 46. And did you at the same place, shortly after the previous conversation, state to A. R. Stoughton that you said McClane if he would take a timbered claim up the Willamette River, or up the Santiam, where the water was to be turned into Mill Creek, he could have an interest in the mission claim, and when he, McClane, would get a title to either of the timbered claims he could have an interest in the mission claim, or words to that effect?

(Objected to by McClane as irrelevant.)

Ans. I did not. I never said that McClane's holding a timbered claim was a condition to have an interest in the mill claim.

178 Ques. 47. You state that you and Mr. McClane were in partnership. Were your terms of partnership reduced to writing?

Ans. They were.

Ques. 48. Where is that article of partnership?

Ans. I do not know; it was brought up and presented to me at the time of taking my other deposition, and identified by me, and McClane had it in his possession.

Ques. 49. From in 1848 up to in 1850 or 1851 was not the claim in dispute recorded in your name and held in your name?

Ans. It was recorded in my name; no change as far I know up to 1851. I never saw the record.

Ques. 50. How long after you left the claim did it stand recorded and held in your name?

Ans. I suppose it stands yet recorded in my name. I did not suppose I had any legal right to hold the claim after the passage of the land law in 1850, as I had not resided upon it.

Ques. 51. During the provisional government and territorial government, up to 1850, was it not held and recorded in your name?

179 Ans. I believe I never disputed that it was recorded and held in my name under the Oregon law.

Ques. 52. Was there or was there not a change made in the record of the land claim in dispute from the territorial records to the county records of this county? If so, when and by whom made?

(Objected to by McClane as incompetent.)

Ans. I think shortly after the passage of an act requiring the land claims to be recorded in each county. I think the record of this claim was made in this county. This was not done by me personally, but with my consent. I do not know who did it. I consented to McClane to have it done. We both agreed to it, to have it conform to the law.

Ques. 53. Has your deposition been taken before between these same parties, in reference to the land claim in dispute, before B. F. Bonham, a justice of the peace, at Salem, on or about the 17th day of January, 1858?

Ans. Yes, I believe it was.

Ques. 54. In answer to the question at that time—in answer to the question propounded to you, how long after you left the claim did it

180 stand recorded and held in your name, did you not swear in words following, "There was no change of the record made as far as I know until the 27 of September, 1850, when the Oregon law was superceded by the donation law of the United States. I think in February, 1850, the record was changed from the territorial to the county record by me?"

(Objected to by McClane as immaterial and irrelevant.)

Ans. I suppose I did. I supposed what was done by my knowledge and consent was done by me.

Ques. 56. Did you not consider the claim in dispute held by you individually at this time? If otherwise, would you not have had it recorded as a partnership claim?

Ans. I did not hold it as my claim individually. I should not have had it recorded as a partnership claim, for by such a record we would cut ourselves off from the possibility of getting any more land for the partnership.

Ques. 57. Did you not so hold in order to allow your partner, McClane, to take and hold another claim for the partnership in the same way?

Ans. Yes, that is implied in my previous answer.

Ques. 58. At the time of the commencement your partnership, and for some time afterwards, was not Mr. McClane attempting to hold another land claim?

(Objected to by McClane as irrelevant and incompetent.)

181 Ans. He was and afterwards.

Ques. 59. At the time of taking your former deposition referred to, in answer to the question "By your understanding who was to record and hold the claim in dispute until such time as title could be obtained and di-

vision made thereof; was it not McClane?" did you not answer it was contemplated I should hold it?

(Objected to as irrelevant and incompetent.)

Ans. I do not know; I cannot say, not having seen the deposition for a number of months. I do not recollect what questions were asked or the answers I gave. It was contemplated that I should hold the claim until such time as we could learn on what terms the United States would give us lands.

Ques. 60. When did you sell out your right in said claim to McClane?

Ans. I sold out my half of the claim in August, 1851, as near as I can recollect, to McClane.

Ques. 61. Did you in August, 1851, in said sale to McClane reserve any part of the claim in dispute to yourself? If so, what was it?

Ans. In dividing the partnership property I took the portion that was in Clatsop County. Mr. McClane was to take the claim here, the one in dispute, and all the improvements upon it in North Salem, and pay all
182 the debts of the firm after deducting all the debts from the valuation of the property, and dividing the remainder equally. The portion of firm-property in Clatsop County was less than one half of said remainder. To make the matter equal McClane gave me a bond for a certain piece of land on the claim in dispute. The bond was for six acres of land, as near as I can recollect.

Ques. 62. Do you still hold that reserve, or what have you done with it?

Ans. I do not hold it. I sold one undivided half of it to McClane previous to his going to the States. The remaining half I sold to him in 1857, some time in the month of December of that year.

Ques. 63. State, if you know, about the time McClane went to the States?

Ans. About the 20th of March, 1853.

Ques. 64. If you know, state what McClane did with the claim in dispute when leaving for the States.

(Objected to by McClane.)

Ans. All that remained of that claim not included in the sale of the mills and mill seat and certain lots sold on the town plat of North Salem he contracted to sell to me on condition for certain sums of money to be paid in the future. I think the aggregate sum was thirty or thirty-one thousand dollars.

183 Ques. 65. Under that sale state whether or not you entered into possession of that claim.

(Objected to by McClane as incompetent on cross-examination.)

Ans. I took the oversight and charge of the claim and went into possession.

Ques. 66. In reference to the cultivation spoken of in your answer to question six did you not judge such cultivation would enable you to hold and acquire title to the claim?

(Objected to by McClane as irrelevant and incompetent.)

Ans. It might have done so if the United States donation law had subsequently given land to claimants without continual personal residence; but it could not have done so where personal residence was unconditional.

Ques. 67. During the years from 1847 to 1849, while you were there on the claim in dispute, did you not judge that the cultivation spoken of would entitle you to hold and acquire title to the claim?

(Objected to by McClane as irrelevant and incompetent.)

Ans. If by the term of acquiring title is meant to acquire for my particular benefit, exclusive of McClane, I would answer no. If by acquiring title was meant acquiring title for the firm, Judson & McClane, I would say yes; for the cultivation and residence of McClane and myself were equal at that time, as I understood it.

184 Ques. 68. State if previous to February, 1850, did not McClane or did not yourself and McClane in company, at different times, undertake to find such a claim as you have referred to, such as McClane was to hold for the partnership, or not. If so, state when and where such efforts were made.

(Objected to by McClane as irrelevant and incompetent.)

Ans. We did. I recollect of making two trips up the Willamette River for the object of finding a claim such as would be judged to be acceptable to both parties. The first effort was in the spring of 1846, while McClane still held the Wallace Prairie claim. We went into the forks of the Santiam at that time. We afterwards, in the summer of 1848 or 1849, we went up the Wallamette Bottom to ascertain whether such claims could be found. I also, at the advice and suggestion of McClane, examined two or more localities in Clatsop County with a view to secure them if sufficiently valuable. This was in 1847.

Ques. 69. State what relation McClane sustains to you.

Ans. Mr. McClane's wife is my daughter.

Ex. in chief resumed.

Ques. 70. Where were you in the summer of 1849?

185 Ans. In 1849, the month of May, I took a trip to Clatsop; gone nearly a month; returned just before the June election, first Monday of June. I then left again for Clatsop during the last week in June; returned to Salem about the first of September; stayed about ten days, and then returned to Clatsop, and stayed there until after 1853.

Ques. 71. What was McClane's employment during the summer of 1849?

Ans. His principal employment was merchandizing—selling goods.

Ques. 72. Are you able now to state whether it was in 1848 or 1849 that you went in search of a claim?

Ans. I think it was in 1848, for the following reason: When we went to search for a claim up the Willamette Bottom James Force resided near Judson's Ferry, as it is now. We staid all night with him on his claim. It now appears to me, from my best recollection, James Force built a house in the lower part of town, and kept a boarding-house.

Ques. 73. When you state that in 1847, 1848, and 1849 residence of yourself and McClane on the claim in dispute were equal, what do you mean?

Ans. I mean only that we both lived on the claim and cultivated. I lived there with my family from about 1st day of December, 1847, to June,
186 1849. In 1849 both McClane and myself cultivated. In 1849 we both commenced cultivation. I left my part of the garden on the claim in June.

Ques. 74. State where you resided in 1847 before going on to the claim in dispute in December, and before that time and after the purchase of Wilson's interest in that claim.

(Objected to by Boon as incompetent at this time.)

Ans. From the time that McClane purchased Dr. Wilson's interest in the fall of 1845 I boarded with my children mostly at the institute until the last of February, 1846. In the latter part of February, 1846, I married and went to keeping house in a house standing on a lot afterwards sold to Dr. Wilson near the creek, on the south side. It was not included in the recorded lines of the claim. It was considered and held as property belonging to the partnership, held by virtue of an agreement made, according to my best recollection, with the trustees of the Oregon Institute. The nature of the agreement we was to give twice as much land outside of the claim in dispute above the milldam as we were to receive. I remained in that house

some three months; then I moved with my family to a house I owned on Block No. 32, South Salem. I remained there with my whole family until about the first of April, 1847; then went to Clatsop with my wife; returned and took down the remainder of my family in June, 1847. I remained there until I returned on the claim in dispute in December, 1847.

187 Ques. 75. State whether the site of the little house where you first removed to with your family, after you married 1846, is or is not within the present limits of the claim in dispute.

Ans. It is not. I think the present line is nearly a width of the creek distant from the line of that lot.

Ques. 76. Did McClane at any time purchase property in Clatsop County?

(Objected to by Boon as incompetent and irrelevant.)

Ans. He did not.

Ques. 77. Did or did not McClane claim or occupy any other claim than the one in dispute after the sale of the claim on Wallace Prairie to Mr. Pugh?

Ans. He did not.

Ques. 78. Were or were not the conditions of the contract of the sale of the land claim in dispute to you by McClane ever complied with on your part?

Ans. They were not; no part of the money were ever paid.

Ques. 79. Was any one left in possession of said claim or any part thereof, by Mr. McClane when he started to the States? If so, state whom and where he lives.

(Objected to by Boon as incompetent and irrelevant.)

188 Ans. James G. Clark and his family commenced occupying the house when McClane left, and was allowed the garden to cultivate during the year 1853. This is the house McClane resided in and where Boon now lives.

Ques. 80. To what extent and for how long did you exercise any control over or occupy said claim under the contract for the purchase thereof to which you have testified?

Ans. I had the control of the house and premises connected therewith until the spring of 1854, about one year.

Ques. 81. Were or were not the articles of partnership between you and McClane annexed to your former deposition, refered to by you, to be sent to Washington therewith?

Ans. To the best of my knowledge they were. I so understood that was the object of their identification by me.

Cross-ex. resumed.

Ques. 82. At one of the times when you and Mr. McClane went to seek for a claim, as refered to, did you not call or stop at the house of Thos. Cox, living up the Willamette, what is called the Santiam Bottom?

Ans. I think probably we did.

189 Ques. 83. State whether or not the sale of the claim in dispute to you by McClane in 1853 or the stipulations of it embraced in a bond or obligation given to you by him.

(Objected to by McClane as incompetent.)

Ans. There was such a bond executed and delivered to me by him at that time. I executed to him notes for the payment of money therefor. The bond I do not know was ever recorded.

Ques. 84. When did McClane return from the States after going there in 1853?

(Objected to by McClane as incompetent and inadmissible.)

Ans. He arrived at Astoria about December, 1856.

Ex. in chief resumed.

Ques. 85. What became of the notes and bonds referred to in your answer to question 83?

Ans. Very shortly after McClane returned from the States in December, 1856, I gave him up the bond, and he either gave up to me the notes or destroyed the notes; I do not know which; I do not recollect which.

Ques. 86. Had you not abandoned the contract prior to that time? If so, say when.

(Objected to by Boon as incompetent and inadmissible.)

190 Ans. I considered the contract effectually forfeited on my part from the time I failed to make the first stipulated payment. I think it was to be in the spring of 1854.

L. H. JUDSON.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. G. WILSON, *for Boon.*
J. B. McCLANE.

STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 24th and 25th days of February, 1862, between the hours of ten o'clock a. m. five o'clock p. m. of each of said days, in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Done at Salem, the 24th and 25th days of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Witness fees: 1 day	$1 50
Justice's fees: 60 folios	$15 00
1 certificate	1 00
	16 00

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

191 *Land record of the provisional government of Oregon, Book No. 5, page 1 and 2.*

L. H. Judson claims 295 acres of land in Champoeg County, situate as follows: Commencing at a stake on the east bank of the Willamette River, bearing N. 2° W. from the NW. corner of the Salem Mills and distant 42 chains; thence due E., along the line of S. Penter's claim, 66 ch's, to a stake in the prairie; thence S. 19° W., along the of J. L. Parrish's claim, 41 ch's, to a stake in the prairie; thence N. 71° W., along the line of said Parrish's claim, 16 25 ch's, to a stake in the prairie; thence S. 19° W., along the line of said Parrish's claim, 31 ch's, to a stake near the Mill Creek; thence N. 60° W., along the line of W. H. Wilson's claim, 62 ch's, to a stake on the E. bank of the Willamette River, (this is 12 ch's up the said river from the mouth

of Mill Creek;) thence down the bank of the river 34 ch's, to the place of beginning, which he has held according to the organic law from June 27th, 1844, which he intends holding with occupancy.

192 Recorded July 9th, 1847.
Attest: (Sig.) THEO. MAGRUDER, *Recorder.*

STATE OF OREGON, *ss:*

I, Lucien Heath, secretary of state, do hereby certify that the foregoing is a true and perfect copy of the original record in the matter of the land claim of L. H. Judson in the land record of the provisional government of Oregon, book 5, pages 1 and 2, now remaining of record by provision of law in my office.

In testimony whereof, I have hereunto set my hand and seal of said State, at Salem, this 28th day of January, 1862.

LUCIEN HEATH, *Secretary of State.*

193 No. 3,006.

John D. Boon, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is a white settler on the public lands in Oregon, and was a resident thereof on and before the 1st day of December, 1850, and above the age of 18 years on the 1st day of December, 1850; that he is a native-born citizen of the United States, and that he was born in the State of Ohio, county of Athens, in the year 1816; that he has personally resided upon and cultivated that part of the public land in Oregon particularly described in Notification No. 3,006, hereunto annexed, continuously from the 23d day of June, 1853, to the 20th day of September, 1853; and he further says that he is intermarried with Martha Boon, his wife, and that he was legally married to her on the 9th day of January, 1839, in the Territory of Iowa, county of Lee.

J. D. BOON.

Subscribed and sworn to before me, in Oregon City, this 20th day of September, 1853.

JNO. B. PRESTON, *Sur. Gen'l of Oregon.*

194 3,006.—*Notification to the surveyor general of Oregon, on the settlement of public land in township numbered 7 south, range No. 3 west.*

Pursuant to the act of Congress approved on the 27th day of September, 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey and make donations to settlers of the public lands," and amendments thereto, I, John D. Boon, of the county of Marion, in the Territory of Oregon, hereby give notice of my claim to donations of five hundred and twenty acres of land, known and designated in the surveys and plats of the United States as the northwest quarter of section 23, township No. 7 south, range No. 3 west; and the northwest quarter of the southwest quarter of section 23, township No. 7 south, range No. 3 west; and the southeast quarter of the southeast quarter of section 22, township No. 7 south, range No. 3 west; and the northeast quarter of section 22, township No 7 south, range No. 3 west; and the south half of the south half of southeast quarter of section 15, township No. 7 south, range No. 3 west; and the south half of the south half of southwest quarter of section 14, township No. 7 south, range No. 3 west; and the south half of the south half of the southeast quarter of section 140, township No. 7 south, range No. 3 west.

Dated at Oregon City, this 20th day of September, A. D. 1853.

J. D. BOON.

195 No. 3,006.—*Form of settler's oath claiming by virtue of settlement and cultivation commenced subsequent to 1st Dec., 1850.*

I, John D. Boon, of the county of Marion and Territory of Oregon, am a claimant of the public land described in the annexed notification to the surveyor general of public lands in Oregon, number 3,006, under the provisions of the act of Congress approved the 27th day of September, 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to make donations to settlers of the said public lands," and I do solemnly swear that I am not acting directly or indirectly as an agent for, or in the employment of, others in making such claim, but that the land so claimed by me is for my own use and cultivation, and that I have made no sale or transfer, or any arrangement or agreement for any sale, transfer, or alteration of the same, or by which the said land shall enure to the benefit of any other person.

J. D. BOON.

Subscribed and sworn to before me, in Oregon City, this 2d day of September, A. D. 1852.

JNO. B. PRESTON,
Surveyor General of Public Lands in Oregon.

196 No. 3,006.

William J. Herren, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is personally acquainted with John D. Boon, the person who claims a donation right to the tract of land described in Notification No. 3,006, and Martha Boon, his wife, and that he has known them to live together as man and wife from December, 1847, to November, 1853, and that they are and were reputed by their neighbors as such during said period.

WM. J. HERREN.

Subscribed and sworn before me this 19th day of November, 1853, at Salem.

In testimony whereof, I, E. J. Harding, clerk of the U. S. district court within and for Marion County aforesaid, have hereunto signed my name and affixed the seal of said court this 19th day of November, A. D. 1853.

[SEAL.] E. J. HARDING, *Clerk.*

197 No. 3,006.

David Presley, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by John D. Boon, and particularly described in Notification No. 3,006, hereunto annexed; that he is personally acquainted with said John D. Boon, and knows that he has personally resided upon and cultivated said tract or tracts of land continuously from the 23d day of June, 1853, to the 19th day of November, 1853.

DAVID PRESLEY.

Subscribed and sworn to before me this 19th day of November, 1853, at Salem.

In testimony whereof, I, E. J. Harding, clerk of the United States district court within and for Marion County aforesaid, have hereunto signed my name, affixed the seal of said court, this 19th day of November, 1853.

[SEAL.] E. J. HARDING, *Clerk.*

No. 3,006.

William J. Herren, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts

of land claimed as a donation by John D. Boon, and particularly described in Notification No. 3,006, hereunto annexed; that he is personally acquainted with said John D. Boon, and knows that he personally resided upon and cultivated said tract or tracts of land continuously from the 23d day of June, 1853, to the 19th day of November, 1853.

WM. J. HERREN.

198 Subscribed and sworn before me this 19th day of November, 1853, at Salem.

In testimony whereof, I, E. J. Harding, clerk of the United States district court within and for the county of Marion aforesaid, have hereunto set my hand and the seal of said court this 19th day of November, 1853.

[SEAL.] E. J. HARDING, *Clerk.*

199 John D. Boon, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is a white male settler on the public lands in Oregon; that he arrived in said Territory about the 1st day of December, 1845; that he was a resident thereof between the 27th day of September and the 1st day of December, 1850, and above the age of 21 years on the 1st day of December, 1855; that he is a native citizen of the United States, and that he was born in Ohio in the year 1817, and that he has personally resided upon and cultivated that part of the public land in , particularly described in his notification on file, continuously from the first day of May, 1851, to the 23d day of June, 1857; and he further says that he is intermarried with Martha Jane his wife, and that he was legally married to her on the 9th day of January, 1839, in Iowa.

JOHN D. BOON.

Subscribed and sworn before me this 23d day of June, 1857, at Salem, O. T.
JOHN S. ZEIBER, *Sur. Gen. of Oregon.*

N. ½ to the wife. J. S. Z.

200 Aaron Purdy, of Marion County, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by John D. Boon, and particularly described in his notification on file; that he is personally acquainted with said John D. Boon, and knows that he has personally resided upon and cultivated said tract or tracts of land continuously from the 15th day of May, 1851, to the 23d day of June, 1857.

AARON PURDY.

Subscribed and sworn before me this 23d day of June, 1857, at Salem, O. T.
JOHN S. ZEIBER, *Sur. Gen. of Oregon.*

Zachariah Pollard, of Linn County, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract or tracts of land claimed as a donation by John D. Boon, and particularly described in his notification on file; that he is personally acquainted with said John D. Boon, and knows that he has personally resided upon and cultivated said tract or tracts of land continuously from the 1st day of May, 1851, to the 23d day of June, 1857.

ZACHARIAH POLLARD.

Subscribed and sworn before me this 23d day of June, 1857, at Salem, O. T.
JOHN S. ZEIBER, *Sur. Gen. of Oregon.*

201 LAND OFFICE, OREGON CITY, *March 4th*, 1862.

We, the register and receiver of the U. S. land office at Oregon City,

Oregon, hereby certify that the foregoing is a correct copy of the original notification and proof of residence and cultivation of John D. Boon, upon lands therein described, on file in this office, and that these are the entire papers relating thereto, as appears by the records of this office.

WM. A. STARKWEATHER, *Register.*
W. T. MATLOCK, *Receiver.*

Filed March 4th, 1862.

JOS. WINSTON, *Clerk.*

202 To John B. McLane, def't, or his attorney of record:

You are hereby notified that on Friday, the 7th day of February, A. D. 1862, at ten o'clock a. m., at the office of and before C. N. Terry, a justice of the peace in and for Salem precinct, Marion County, State of Oregon, at Salem, I shall proceed to take the depositions of Samuel Parker, N. T. Caton, and others, as witnesses, to be used on the hearing of the cause wherein you are defendant and myself complainant, in chancery, now pending in the circuit court of the State of Oregon, for the county of Clackamas, the said witnesses living out of said Clackamas County and more than twenty miles from the place of holding said court.

Salem, Oregon, Feb. 3d, 1862.

JOHN D. BOON.

203 I certify that I have this the 3d day of Feb., 1862, served the within notice by delivering to the wife of John B. McClane, a white woman over 14 years of age, a copy of the same, at his residence in Marion County, Oregon.

GEO. A. EDES, *Sheriff Marion Co.*

For serving	$0 50
mileage	20
return	25
	95

204 JNO. D. BOON
vs.
JNO. B. MCCLANE.

N. T. Caton, being first duly sworn, deposes and says:

Ques. 1. What do you hold in Marion County?

Ans. I am county clerk and ex officio clerk of the circuit court for the county of Marion and State of Oregon; also recorder of deeds for Marion County.

Ques. 2. State whether you are well acquainted with the land claim in dispute.

Ans. I am well acquainted with it, and have been since March, 1851.

Ques. 3. State, if you know, who occupied the claim, and claimed it formerly.

Ans. I know from the records that L. H. Judson claimed it, and I know that L. H. Judson was upon the claim. Whether he occupied it or not I do not know, as a claimant; and I do not know what year it was.

Ques. 4. State whether or not the boundaries described in the annexed certified copy of land record embraced the land now in contest between the parties aforesaid.

Ans. I believe they do.

205 Ques. 5. State the usage of the assignment of rights or sales of possession of land claims recorded in your office.

(The above question was objected to by def't's counsel.)

Ans. It was the custom with the former clerks to note such assignments on the face of the record itself.

Ques. 6. State whether there are any such assignments upon the records of which a copy is hereto annexed.

Ans. There are none.

Ques. 7. What was Marion County formerly called?

Ans. It was Champoeg County.

Ques. 8. State where the records of what was formerly Champoeg County kept.

Ans. They are kept in my office.

Cross-examination.

Ques. 9. State when you saw Mr. Judson on the claim, as stated in your answer to question No. 3, whether he was residing on said claim with his family or not.

Ans. I cannot state.

206 Ques. 10. How long have you been clerk of the circuit court of Marion County, State of Oregon, and recorder of deeds?

Ans. I have been clerk one year and eight months.

Ques. 11. Have you any knowledge whether Mr. Judson ever claimed the land claim in dispute, except what you have derived from the records, a copy of which is hereto annexed?

Ans. I have not.

Ques. 12. State, if you can, whether the assignment of possessory rights to land claims, to which you refer in your answer to question No. 5, are numerous or otherwise.

Ans. I think they are not numerous; I cannot state positively; I have not the records by me.

Ques. 13. Were the assignments to which you have referred made since the passage of the donation law?

Ans. I think they were made before, but cannot state positively.

Ques. 14. When you refer to the usage of endorsing assignments upon the face of the record do you mean to say that it was the uniform custom of parties in Marion County transferring possession to land claims to have such endorsements made, or do you simply refer to the usage of the clerk to make such endorsements upon the request of the parties?

207 Ans. I mean to say that it was the custom of the clerk when requested by the parties.

Ques. 15. Have you any knowledge of the usage in relation to such assignments, except what you have derived from the inspection of the record within the last three years?

Ans. I have none.

N. T. CATON.

STATE OF OREGON, *County of Marion:*

I, Chester N. Terry, a justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 7th day of February, 1862, at ten o'clock, in pursuance of notice; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Given under my hand this 7th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

By agreement of parties the taken of deposition was adjourned until the 10th inst., at 10 o'clock a. m.

CHESTER N. TERRY, *Justice of the Peace.*

208 *Record of land claims in the county of Marion, State of Oregon, page* 30.

L. H. Judson claims land in Marion County and Territory of Oregon as follows, to wit: Commencing at a stake on the east bank of the Willamette River a little more than a half a mile N. from North Salem Mills; thence due east, 63.25 chains, to a stake in the prairie, from which the Oregon Institute bears magnetic S.; thence S. 19° W., along the west line of John Baker's claim, to said Baker's SW. corner, and containing the same course, in all 68.50 chains, to a stake near the right bank of Mill Creek; thence N. 60° W., along the north line of W. H. Wilson's claim, 59 chains, to a stake on the east bank of the Willamette River, being said W. H. Willson's NW. corner, and L. H. Judson's SW. corner; thence down the meanderings of the east bank of the Willamette River to the place of beginning, being about 36 chains, containing about a half, or a little less than a half, a section of land. On the above-described claim of L. H. Judson the town of North Salem, laid off in the month of February, 1850, by the said Judson, as follows, to wit: 24 blocks, 19 of which contain 8 lots, each of which are one hundred links in front and 185 links back, with alleys running through each block 24 links wide. Block No. 16 contains but 4 lots, the size of the above-mentioned lots, fronting on Third street. Block 17 contains but 7 lots, the size of the above-
mentioned, four of which front on Third street, and 3 on Second street.
209 Blocks 19 and 23 contain but 6 lots each, the size of the above, 3 of each block fronting on Second street, and three of each on Front street, and three of each block on Water street. The size of the three last-named lots as follows: those fronting on Front street are 100 links front and 125 links back. The remainder this tier of blocks, which are No. 25, 26, and 27, contain 8 lots each. The lots in these blocks are the size of the last mentioned; that is, those fronting on Water street are 100 links front and 125 links back; those fronting on Front street are 100 links front and 150 links back. The streets in this town cross each other at right angles, and are all one hundred links wide, except Front street and Broadway. These two streets are 150 links wide. This town is laid off on a variation of 19° 30′ E. The streets are named as follows, commencing at the west side: 1st, Water street, Front street; then Second street, Third street, Fourth street, Broadway, Fifth street, Sixth street, and Seventh street, the last named being on the east side of the town as now laid out. Cross streets, commencing on the south side of town, are named Mill street, Market street, Oak street, Division street, Shipping street, and North street.

A plat of the above-described town is filed in the clerk's office, bearing date of this record, showing the number of blocks and lots, their sizes and width, and names of streets.

J. N. GILBERT, *Clerk, P. C., M. Co.*

STATE OF OREGON, *County of Marion, ss:*

I, N. T. Caton, clerk of the circuit court of the State of Oregon for
210 the county of Marion, and recorder of deeds of Marion County aforesaid, do hereby certify that the foregoing is a true copy of the record entry in the matter of land claim of L. H. Judson, in Book 1, pages 30, 31, and 32, of the records of land claims of said county, now on file and remaining of record in my office, the proper repository thereof, according to law.

Witness my hand and the seal of the said circuit court this February 7th, 1862.

N. T. CATON, *Clerk of said Court.*

Witness fees, 1 day	$1 50
Justice's fees, 6 folios	$1 50
1 certificate	1 00
	2 50

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

211 State of Oregon, county of Clackamas, circuit court, March term, 1862.

J. D. Boon *vs.* J. B. McClane. } Chancery.

J. B. McClane *vs.* J. D. Boon. } Action at law.

J. G. Wilson, being duly sworn, says that he is and has been one of the attorneys for J. D. Boon, in the case of J. B. McClane *vs.* J. D. Boon, action at law, and the case of J. D. Boon *vs.* J. B. McClane, in chancery, both now pending in the said circuit court of the State of Oregon for said county; that during the month of December, 1861, and January, 1862, there was no regular communication between Salem or Oregon City and Canyonville, in Douglas County, by mail or otherwise, except part of the first week in January; that about the last days of January, 1862, as attorney aforesaid, he prepared notices for taking the depositions of James G. Clark and others, at Canyonville, on the 22nd day of February, 1862, before and at the office of J. L. White, a justice of the peace in and for Canyonville precinct, Douglas County, Oregon, on the part of J. D. Boon, to be used in evidence in both of said causes now here pending; and that said notices were placed in the hands of the sheriff of Marion County, Oregon, and by duly served upon the same day upon J. B. McClane, at or near Salem, Oregon, and service duly made upon said notices. That immediately affiant mailed said notices to the firm of Mosher & Chadwick, of Rosbury, Douglas
212 County, with instructions to forward the same to said justices, and to attend to the taking of said depositions for said Boon. That about the 8th day of February, 1862, affiant received from S. P. Chadwick a letter conveying information of the receiving of said notices by him, and that he had forwarded the said notices to said justice, and notified him and the said witnesses that the depositions would be taken by the firm of Mosher & Chadwick, attorneys. That the said notices were prepared in due form as required by law, and were made in each of said causes. That the time for taking said depositions has long since passed, and though full and ample directions were sent notifying said justice and said attorneys, as to when the same were to be used; and that the same were ordered to be immediately sent to James Winston, the clerk of this court; yet they have failed to arrive. That said Chadwick informed affiant, and affiant verily believes, that the said depositions would be taken on said day, and immediately forwarded to this court; that the depositions to be taken were those of James G. Clark and wife; and affiant avers that the testimony of both of said witnesses is material to the issue in both of said causes; and affiant avers that he has in his possession, at Salem, a true copy of the deposition of said Jas. G. Clark, taken in the matter of contest between said McClane and Boon, at the land office at Washington City, taken in 1857 or early in 1858; that

the testimony of said Clark would be and he would so swear that he, Clark, was well acquainted with said premises; that he lived thereon from
213 the early part of 1853 to the spring of 1854; that McClane told him that he did not intend to return from California when he went there in 1848, in Sept.; that he would not have returned had it not been for a letter which his, McClane's, present wife sent him; that while in California McClane said he voted at an election in the spring of 1849, in Sacramento, in California; that he, McClane, said that he knew when he went to the States on the 26th of March, 1853, that he had not lived on the land claim in dispute long enough to hold the same under the donation law, but that he would not remain thereon any longer if he should lose it by going away; that McClane went to the States on the 26th of March, 1853, and that he sold the said premises to L. H. Judson; that he, Clark, rented and occupied said premises as lessee under L. H. Judson, until about April, 1854, from the time McClane left for the States, and that he gave therefor but ten dollars per month as rent; that said witnesses live nearly one hundred and ninety-eight miles from Oregon City, the place of holding this court; that ample time has elapsed since the taking of said depositions for the same to reach this place; that the mail is about three days in passing between said Canyonville and this place. That there are no other witnesses by whom the fact of the alleged voting by McClane and the admissions of McClane that he had not resided upon said land long enough to hold the same under said law, and that he would not stay any longer thereon, and that he did not intend to return from California when going in 1845, can be proved as affiant believes.

J. G. WILSON.

Subscribed and sworn to before me March 6th, 1863.

JAS. WINSTON, *Clerk*,
By W. C. JOHNSON, *Deputy*.

214 Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk*.

Deposition in relation to the contest of land claim between John B. McClane and J. D. Boon.

TERRITORY OF OREGON, *County of Marion, ss:*

Zacariah Pollard, being first duly sworn, says:

Q. Are you acquainted with the parties to this contest, J. B. McClane and J. D. Boon?

Ans. I am.

Q. When and where did you first become acquainted with them?

Ans. I first became acquainted with McClane in the winter of 1846. I knew Mr. Boon first about Christmas 1847. I got acquainted with them both about the mills on the claim in dispute, in Salem.

Q. Where were you residing?

Ans. In Marion County.

Q. Did you ever reside and work upon the claim in dispute?

Ans. I worked and boarded there.

Q. When did you first commence to work there?

215 Ans. In 1846; in the winter.

Q. How long did you remain about that claim?

Ans. I was there on and off from the winter of 1846 to the fall of 1851 or 1852.

Q. Did you work for McClane about the mill there?

Ans. I don't recollect ever doing any work for him at the mill or about the mill.

Q. Do you know of McClane ever having kept batch about the mill?
Ans. I do not.
Q. Do you know where McClane boarded?
Ans. A part of the time I worked on the claim he got his meals at Evans's, a black man's, on the south side of the creek. I think it was not on the claim in dispute. A part of the time he boarded on the claim at Akanakas.
Q. State the year in which he boarded at these places.
Ans. It was in the winter of 1846.
Ques. From the fall of 1846 to the fall of 1851 or 1852 were you frequently on the claim in dispute?
Ans. I was.
216 Q. State, if you know, the time that McClane started for the mines in California.
Ans. It was between the first and middle of September, 1848.
Q. State, if you know, what time he returned.
Ans. About the 1st of May, 1849.
Q. Do you know of McClane's having left any batching utensils or other household furniture upon the claim in dispute, at the time of his going to the mines in Cal.?
Ans. I do not know that he left anything at all.
Q. Had you any conversation with McClane on his return from Cal., touching his intention of taking a claim up Willamette River? If so, state what that conversation was.
Ans. I had. McClane enquired of me if I knew where he could get a claim that would be suitable for timber, and that they wanted timber to run the mill. McClane said he was going to look at the claim were James Force lived at that time. This claim was up the Willamette River. He also spoke of hunting out vacant land, if there was any there.
217 Q. Did you understand from McClane, during that conversation, that it was his intention to reside upon the claim that he might take?
Ans. I understood that he wanted to take a claim to hold it as a claim. At that time a man had to reside on a claim in order to hold it or pay so much to the local government.
Q. Do you know of McClane having gone up the Willamette River to hunt a claim about that time?
Ans. He told me that he had been up there looking for a claim.
Q. How long was this last conversation you had with McClane after his return from Cal.?
Ans. I think about two weeks.
Q. Have you ever had a conversation with McClane about who should hold the Salem mill claim?
Ans. I don't think I ever did.
Ques. Do you know of McClane ever having cultivated the claim in dispute?
Ans. I don't know that he ever cultivated the soil until after his return from Cal.
Q. How long after his return do you know of his first cultivating the claim?
218 Ans. I think he set out some fruit trees in the fall after he returned from Cal., or it might have been in the following sprig.
Q. In the conversation before alluded to did you understand from McClane that Judson was holding the Salem Mill claim and in his own right?
Ans. I did not, but it was my impression that Judson was holding the claim as the rest of us were holding our claims. I understood from general report that the claim refered to belonged to Judson.
(McClane objects to the witness stating what he understood from general report.)

Q. Did you learn from Judson and McClane as to what they were partners in?

Ans. I understood from both of them and from dealings about the mills that they were partners in the mills. I never understood from them whether they were partners in the claim or not.

Q. Who cultivated the claim until the fruit trees were put out?

Ans. I don't recollect of seeing McClane or Judson either at work there previous to the planting of the fruit trees; but I saw others at work there whom I suppose they employed.

219 *Cross-examination.*

Ques. Did you ever know McClane to take any other land claim than the one in dispute?

Ans. I never did.

Q. What proportion of the time from that in which you first went to the mill to work in 1846 until you left there in 1851 or 1852 was you absent from there?

Ans. From 1846 to Sept., 1847, I was absent most of the time. After that time I was at work mostly in South Salem until 1851 or 1852, and was frequently passing at the mills.

Q. May not McClane have kept batch on the claim in dispute, more or less during the period from 1846 to 1851 and 1852, and you not have known it?

Ans. He might have done so.

Ques. Who employed and paid you for the work performed on the claim in dispute?

Ans. McClane employed me, and he paid me out of the mills. The mills of which I speak are in North Salem, on the claim in dispute.

Q. Did Mr. Brown set up any right to the claim in dispute when you first knew him?

Ans. He did not.

(Signed) ZACHERIAH POLLARD.

220 STATE OF OREGON, *County of Marion, ss:*

FEB. 21ST, 1862.

It is hereby agreed by and between the counsel and attorneys in the cases of J. D. Boon *vs.* J. B. McClane, and J. B. McClane *vs.* J. D. Boon, both now pending in the circuit court of the State of Oregon for Clackamas County, Oregon, this copy of the deposition of Zachariah Pollard heretofore taken by said parties, on the 6th day of October, 1857, may and shall be used in evidence on part of John D. Boon, on the trial or hearing of both said causes, subject to all legal objections as to the competency, relevancy, materiality, and admissibility of the matter and the form of the questions in said deposition contained.

J. G. WILSON, *Att'y for Boon.*
J. S. SMITH, *Att'y for McClane.*

221 TERRITORY OF OREGON, *County of Marion, ss:*

I, B. F. Bonham, justice of the peace in and for said county, do hereby certify that the within deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 6th day of October, 1857, at 10 o'clock a. m., in pursuance of notice; that the within-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 6th day of October, 1857.

B. F. BONHAM, *Justice of the Peace.*

222 Deposition concerning the contest of the land claim between John B. McClane and J. D. Boon.

TERRITORY OF OREGON, *County of Marion, ss:*

Henry Hawkins, being first duly sworn, deposes and says:

Q. State how long and when have you known those two parties.

Ans. As early as 1848. At the disputed claim.

Ques. During what years have you been intimately acquainted with the claim in dispute?

Ans. From 1847 until now.

Q. What connection had you with the claim in dispute in 1847?

Ans. I rented the Mission Mills for one year, from the 4th of July, 1847, until the 4th of July, 1848. I had the mills rented, and resided there on the claim. I rented the mills of Judson.

Q. At that time who were the reputed owners of mills?

(Objected to by McClane.)

Ans. Judson and McClane.

Q. From whom did you learn that Judson and McClane were the owners of the mills?

(Objected to by McClane.)

Ans. Judson, McClane, and Wilson.

223 Q. State what part, if any, of the claim in dispute you rented, and from whom.

Ans. I don't know that I rented any but the mills, but Judson gave me the garden and half the pasture and the house to live in.

Q. At that time who was claiming and holding possession of the claim in dispute?

Ans. Judson.

Q. State, if you know, what interest McClane had in the mills, the claim in dispute, or other property there?

Ans. I did not think he had any in the claim. Only in the mills and hogs.

Q. During the time you were there, and while McClane was present, where did he board?

Ans. At my house; the one in which Mr. Boon now resides.

Ques. Up to 1849 and 1850 had Mr. McClane any fixed and permanent place of residence?

Ans. I think not.

Q. In the latter part of 1847 and the early part of 1848, during the Kyuse war, where was Mr. McClane?

Ans While he was not at the war he was at my house. I think he

224 was gone to the war about a month.

Q. Do you or do you not know of his absence in the latter part of the year 1848?

Ans. He went to Cal., I think, in Sept., 1848.

Q. What time did you cease residing on the claim in dispute in 1848?

Ans. In July, 1848.

Q. State whether Mr. McClane was boarding in your family up to the time you left the claim.

Ans. He was.

Q. State who took possession of the house at the time or first after you left it.

Ans. Judson and family, I believe.

Q. During the year you rented the mills who cultivated the claim in dispute?

Ans. Henry Hawkins.

Q. State during that year whether Mr. McClane did or did not cultivate this claim?

Ans. He did not.

Q. Who do you understand was the owner of the house in which you lived and the premises you cultivated?

(Objected to by McClane.)

225 Ans. Judson, L. H.

Q. From the time you first became acquainted with Mr. McClane how long did he remain a single man?

Ans. He remained a single man until he came back from Cal., and two or three weeks after.

Q. At the time of Mr. McClane's going to Cal. had he any household furniture?

Ans. I think not.

Q. At the time you left the place in July, 1848, had he any then?

Ans. Not that I know of.

Q. State when John D. Boon came on that claim in dispute to reside.

Ans. He came on to the claim in the summer of 1847, and went into the mill with me.

Q. State, if you know, whether he has resided on the claim in dispute and cultivated it ever since.

Ans. His family has, but he has been to Cal.

Q. How often, and when, and how long has Mr. Boon been absent in Cal.?

Ans. I cannot say; I know of his having been there twice, but how
226 many more times I cannot say. I don't know how long he was there. I think Boon went to Cal. the first time about the same time McClane did.

Q. During his absence where were his family residing?

Ans. On this disputed claim.

Q. State if you know of Mr. McClane's cultivaiton of this claim at any time.

Ans. I don't know that he cultivated it at all.

Q. During the year 1846, 1847, and 1848 state if Mr. McClane cultivated that claim.

Ans. Not to my knowledge.

Q. State what improvements, if any, Mr. Boon has made in the claim in dispute.

Ans. He has built two houses that I know of. They are large houses.

Q. State further if you know of his making or purchasing any other improvements than those stated.

Ans. He bought a storehouse there.

Q. State, as near as you can form an estimate, what the improvements
227 made by Mr. Boon or purchase by him on the claim are worth.

Ans. I guess twenty thousand dollars.

Q. State if you know of any understanding between Judson and McClane as to how McClane might acquire an interest in this claim in dispute.

(Objected to by McClane.)

Ans. I heard them twice in the time of my tending the mills speak concerning the claim, and Mr. Judson told McClane that he must go and get a timbered claim, and when he got the claim and lived on it the time then they were to deed to each other, Judson half of the mill claim to McClane, and McClane half of the timbered claim to Judson; and the last time Judson remarked that they had waited so long that all the good claims were taken up, and that he, McClane, would have to put something in previous to getting the claim to make the timbered claim equal in value to the mill claim.

Q. When was this last conversation?

Ans. I think it was in the fall of 1847.

Q. State if you know at that time whether McClane claimed an interest in this claim in dispute as claimant.

Ans. He did not, agreeable to their own statements.

228 Q. State what relation you sustain towards J. D. Boon and L. H. Judson.

Ans. They both married my daughters.

Cross-examination.

Q. Was the witness, Mrs. Judson, who testified this morning, your daughter?

Ans. The old lady said so; I tried for it.

Q. You have said that McClane had no fixed and permanent residence previous to 1850. What do you mean by a fixed and permanent residence?

Ans. A man must have a house and be living there, cultivating the ground.

Q. Where did Jno. McClane reside from 1846 to 1850?

Ans. At the mill or about there.

Q. On the claim in dispute?

Ans. It is.

Q. What business was Mr. Boon engaged in from 1846 to 1853?

Ans. Merchandizing and building on the disputed claim, planting out fruit trees and so on.

229 Q. State what it was and when it was that Mr. Boon built on that claim.

Ans. I think it was in 1848, 1849, and 1850 that he built houses or had it done.

Q. How many houses had Mr. Boon built on that claim?

Ans. Two.

Q. What were they used for?

Ans. One for the legislature and the other for a dwelling and storehouse.

Q. What year did he build the house for the legislature?

Ans. I don't know.

Q. What year did he build the dwelling-house?

Ans. I don't recollect.

Q. What other improvements has Mr. Boon put upon the claim in dispute?

Ans. I don't know what.

Q. Has he put any other improvements on the place?

Ans. Not that I recollect of.

230 Q. Do you estimate the dwelling-house and the legislature house to be worth 20,000 dollars?

Ans. If they can get that for them they are worth it.

Q. When you said that Mr. Boon had put twenty thousand dollars' worth of improvements on the claim in dispute, to what claim did you refer?

Ans. All the improvements he had made.

Q. You have said that Mr. Boon had put 20,000 dollars' worth of improvements on the claim in dispute; you have further said that you know of no other improvements put there by Mr. Boon save the dwelling-house and the legislature house. Did you estimate those two houses to be worth 20,000 dollars?

Ans. I said fifteen or twenty thousand; somewhere along there.

Q. Is your answer to the fourth interrogatory, on the sixth page, correct or incorrect?

Ans. I think just the same as I before stated.

Q. Did Mr. Boon cultivate the claim in dispute in 1850?

Ans. I don't know whether he did or not.

231 Q. Did he in 1851?

Ans. I think he did.

Q. What portion of the claim did he cultivate?
Ans. He cultivated a garden spot.
Q. Where was the garden spot that he cultivated?
Ans. On the disputed claim.
Q. Did you see him at work in that garden in 1851?
Ans. I walked over the garden with Mr. Boon.
Q. Was that all the work you saw him do in that garden in 1851?
Ans. It was.
Q. Did Mr. Boon cultivate any portion of the claim in 1852?
Ans. I said before I did not see him at work on it.
Q. Did he cultivate any portion of the claim in 1853?
Ans. It was cultivated, but I don't know who did it; I was not there, but Mr. Boon told me that he had cultivated it; and told me he had got a man to plow some land, which he showed me.
(McClane objected to that portion of the preceding answer which states what Mr. Boon said.)
232 Q. Did Mr. Boon hold a claim on the west side of the Willamette River? If so, state when he took it, and how long he held it.
Ans. He took it in 1845, and traded it off in 1847.
Q. Did Mr. Boon hold a claim on the east side of the Willamette River, somewhere near Salem? If so, state when he took it and how long he held it.
Ans. He took it in 1847, but how long he held it I can't tell. I think he kept it two or three years.

Examination in chief resumed.

Q. Since 1847 has John D. Boon taken up his residence on any other claim than the one in dispute?
Ans. Not to my knowledge.
Q. State what improvements on the claim in dispute John D. Boon has purchased since 1847.
Ans. I don't know how much; he purchased the Empire Store, a baker shop, and blacksmith shop.
Q. State if you know of Mr. Boon's making any other alterations or improvements on any other building now on that claim.
Ans. He built a barn, a woodhouse, and had the old Judson house recovered; he has set out apple trees and made plank fence around his house and barn.
233 Q. State if in your answer to interrogatory fourth, on the sixth page, you included or intended to include all these improvements by you mentioned as having been made or purchased by John D. Boon on the claim in dispute.
Ans. I intended in my answer for the 20,000 dollars to include all the improvements which Boon had made and bought.
(Signed by) HENRY HAWKINS.

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

TERRITORY OF OREGON, *County of Marion, ss:*

I, B. F. Bonham, justice of the peace in and for said county, do hereby certify that the within deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 26 day of November, 1857, between the hours of 8 o'clock a. m. and 5 o'clock p. m., in pursuance of adjournment of the parties; and that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but

the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, November 26th, 1857.

B. F. BONHAM, *Justice of the Peace.*

234 STATE OF OREGON, *County of Marion:*

FEB. 17, 1862.

It is hereby agreed by and between the counsels and attorneys in the cases of J. D. Boon *vs.* J. B McClane and J. B. McClane *vs.* J. D. Boon, both now pending in the circuit court of the State of Oregon for Clackamas County, Oregon, that this copy of the deposition of Henry Hawkins, heretofore taken by said parties on the 26th of November, 1857, may and shall be used in evidence on part of said John D. Boon on the trial or hearing of both said causes, subject to all legal objections as to the competency, relevancy, materiality, and admissibility of the matter and the form of the questions in said deposition contained.

J. G. WILSON, *Att'y, &c., for Boon.*
J. S. SMITH, *Att'y for McClane.*

235 Deposition in the matter of the contest of the land claim between John B. McClane and J. D. Boon.

TERRITORY OF OREGON, *County of Marion, ss:*

Mrs. Nancy Judson, being first duly sworn, says:

Q. Are you the wife of L. H. Judson?

Ans. I am.

Q. When were you married to him?

Ans. Feb. 22nd, 1846.

Q. Was he then in possession of a land claim?

Ans. He was.

Q. Where was that claim?

Ans. It was the disputed claim on which John D. Boon now resides.

Q. How long did he make it his home there and hold that as his claim? (Objected to by McClane.)

Ans. He had it recorded in his name, and as far as I know it was still recorded in his name until he sold out to McClane.

Q. At what time did this sale to McClane take place?

Ans. In August, 1852; I do not recollect distinctly the time.

236 Q. Do you recollect the time that McClane returned from Cal.?

Ans. It was the last of May or the first of June, 1849, as near as I can remember.

Q. Do you recollect how long he had been gone to Cal.?

Ans. He started in Sept., 1848.

Q. Previous to that time what had McClane been doing in the country?

Ans. He had been at work around the mill some, and had held a claim down below where Pugh lives, which he sold in 1846.

Q. After he sold the Pugh claim did he ever hold another?

Ans. Not that I know of, but he was to go up the river somewhere and take a timbered claim.

Q. What, if any, interest did he hold in the mill?

Ans. I always understood that he owned half the mills, and that he bought of Dr. Wilson.

Q. Did he or not at that time hold an interest in the claim?

Ans. My understanding from McClane and Judson was that McClane had no interest in the claim now in dispute, but he, McClane, was to go up the

river and take a timbered claim and make title to it, and Judson was
237 to make title to this claim in dispute; and Judson was then to give McClane half of the claim now in dispute, and McClane was to give Judson half his timbered claim.

Q. Who held possession and control of the claim in dispute as claimant in 1848 and 1849, while McClane was in Cal., and previous to that time?

Ans. Mr. Judson always held it. I know he always had the control of it.

Q. Who cultivated it?

Ans. In the summer of 1846 Mrs. Morris and myself made garden back of the house where Mr. Boon now lives, and in the summer of 1847 my father made garden there. Mr. Judson rented him the mills. In 1848 I and Mrs. Boon, aided by Mr. Judson, made garden there, and in the spring of 1849 we (Mr. Judson and myself) made garden there, and left it and went down to Clatsop. This was after McClane came back from Cal.

Q. State where Mr. Boon and his family were residing?

Ans. They were living on the island.

238 Q. When did they move there?

Ans. I can't tell when.

Q. Is the island a part of the old Judson claim?

Ans. It is.

Q. How did Mr. Boon have possession of it?

Ans. He bought from Mr. Judson.

Q. What is the distance between where Mr. Boon resided on the island and where he now resides, in the old Judson house?

Ans. I presume it is about a hundred yards.

Q. Since the time Mr. Boon permanently settled on that claim have his family resided there continuously to the present time?

Ans. I think they have; they have always been there when I was there.

Q. Have they or not cultivated it annually?

Ans. I think they have.

Q. To your knowledge did McClane ever cultivate that claim up to the time of his return from Cal. in 1849?

239 Ans. He did not to my knowledge.

Q. What was the nature of McClane's residence on that claim at any time previous to his going to Cal. in 1848?

(Objected to.)

Ans. He boarded at our house a part of the time, and part of the time at father's, and part of the time at Mr. Morris's.

Q. Had he any family or household goods?

Ans. He had no family, and I don't know of his having any household goods.

Q. When did McClane become a married man?

Ans. After he came back from California. I can't tell the day.

Q. Previous to that time had he anything about him to denote a fixed habitation or residence?

Ans. Not that I know of.

Q. Were you present at the time McClane bought the disputed claim of Judson?

Ans. I was.

Q. What occurred at the time between the parties?

240 Ans. McClane came down and told Mr. Judson that the mills were eleven thousand dollars in debt, which was more than they could ever pay, and if Judson would sell out to him he would go to the creditors and get them to wait with him until he could pay them; and Mr. Judson said afterwards he rather dogged him to have him sell out, and I was opposed to it at the time.

(Last preceding answer objected to by McClane.)

Q. What was it that McClane proposed to buy?

Ans. The way I understood it, it was the claim and his half of the mills.

Q. What did Mr. Judson receive from McClane for the claim?

Ans. They reconed it up, and McClane was to have the property up here and pay off the demands, and Mr. Judson was to take the property down at Clatsop.

Q. State whether or not Mr. McClane ever paid Mr. Judson any money for the claim.

Ans. I do not know that he ever did.

Q. State whether or not McClane represented at the time of the purchase of the land claim that the mill property at Salem was greatly in debt.

241 Ans. He did.

Q. Was, or not, that indebtedness agreed to be assumed by McClane taken in payment for the claim?

(Objected to by McClane.)

Ans. It was in payment for the claim and Judson's part of the mill.

Q. Do you recollect of McClane's return from California, of his going to hunt a land claim for himself?

(Objected to by McClane.)

Ans. Mr. Judson and McClane went up the river to hunt a claim for McClane. They were gone one or two days. The claim was for McClane to hold.

Q. At that time who was in possession and holding as claimant the claim in dispute?

Ans. We were living on it.

Q. What do you mean by we?

Ans. Mr. Judson and his family.

Q. Who was the claimant of the claim?

Ans. I understood that Mr. Judson was the claimant. He had the claim recorded in his own name.

Q. Do you recollect distinctly the time of McClane's coming to Clat-

242 sop at the time referred to when he bought the claim of Judson's?

(Objected to by McClane.)

Ans. I think it was in August, 1852.

Q. Might it not have been in August, 1851?

A. I think it was in 1852.

Ans. What time did McClane leave Oregon to go to the States?

Ans. I can't say; I don't remember the time.

Q. About the time he was leaving did you hear him say anything, and if so, what, relative to his residence on the claim in dispute?

Ans. I heard him and his wife talking. He said it lacked a month or about a month of being four years from the time he came back from California to the time he was leaving.

Q. What further, if anything, did you hear McClane say relative to his further residence on the claim?

Ans. He said he would not stay another month longer for the place.

Q. At the time McClane left for the States do you know anything of his selling out his possession of the claim in dispute? If so, what? and state to whom.

(Objected to by Mr. McClane)

243 Ans. He sold out to Mr. Judson.

Cross-examination.

Q. When did Mr. Judson move to Clatsop? Give the precise time as near as you can.

Ans. It was in 1849, I think, when he moved down there.

Q. Did Mr. Judson take a land claim at Clatsop or any one? When did he take or buy it?

Ans. After he sold out to McClane he bought one down there.

Q. How long was it after he sold out to McClane that he bought a land claim down there at Clatsop?

Ans. I don't remember how long it was.

Q. In what year and month of the year was it that he bought the claim?

Ans. I don't remember what time it was, and therefore I dare not say.

Q. Can you not state the year in which he bought the claim?

Ans. I don't think I can, because I did not charge my mind with the time he bought his place there.

244 Q. Have you a written memorandum in your hand to which you referred when I asked you a question just now?

Ans. I have a few dates that I put down with my own hand, thinking that I might be frustrated when called on as a witness.

Q. Have you nothing else but dates upon that memorandum?

Ans. I have not.

Q. Will you let me see that memorandum?

Ans. I don't think it is necessary, sir.

Q. Do you decline to let me see the memorandum?

Ans. I can hold it and let you look at it, if you wish to. There is no secret in it, I suppose.

Q. Do you decline to let me take the memorandum and examine it?

Ans. I say, as I said before, that he can look at it and I hold it in my hand.

Q. Do you decline to let me examine it otherwise than as you hold it?

Ans. You can examine it here.

Q. Where did you make this memorandum?

245 Ans. I made it when I was alone at home, and without any person dictating either.

Q. Has Judson held the land claim at Clatsop since he first bought it as a land claim under the donation law?

Ans. He has.

Q. Where has Judson resided since he bought the claim at Clatsop, and where does he now reside?

Ans. He resided on his place at Clatsop until his time was out.

Q. Who held the claim in dispute after Judson took the claim at Clatsop up to the spring of 1853?

Ans. I suppose McClane did.

Q. At the time McClane left for the States did he not in the same conversation you have refered to say that he had a certificate from Surveyor General Preston for his the land claim now in dispute?

Ans. He said he had not it, but he was going to get it.

Q. Did he not say in the same conversation that the surveyor general had decided that he, McClane, had completed the residence and cultivation required under the donation law?

(Objected to by Boon.)

Ans. I don't think I heard any such thing.

246 Q. Are you anywise interested, either directly or indirectly, in the land claim in dispute, or any portion of it?

Ans. No, sir; I don't know that I am.

Q. Have you any promise or expectation of receiving any portion of said claim, or any benefit therefrom, either from Mr. Boon or his wife, in case the claim is confirmed to Mr. Boon?

Ans. No, sir; I am not bribed.

Q. Did Mr. McClane ever keep house or batch for himself on the claim in dispute previous to his marriage?

Ans. If he did I don't remember anything about it.

Q. With whom did Mr. McClane board just previous to his departure for Cal. in 1848?

Ans. I don't remember, but I think he boarded with us.

Q. Did he board with you during the whole of the summer of 1848?

Ans. I can't tell; there was so many people who lived around there that he boarded with.

Q. Did he board with anyone living on the claim except those who lived in his (McClane's) house?

247 Ans. It seems to me that he did board away from our house. We called it our house when we lived there.

Q. What board per week did Mr. McClane pay Judson while he boarded with him?

Ans. I don't know what board was worth per week. He boarded with other families mostly.

Q. Did you in the summer of 1848 desire Mr. McClane to quit keeping batch and board with you; and did you, for the purpose of inducing him to do so, take all or any portion of the utensils and provisions which he had and used in keeping batch and take them to your house?

Ans. I don't remember any such thing. I recollect nothing about it. I think I should have had little to do if I had done it.

Q. Do you know of Mr. McClane buying a quantity of butter of your mother in the summer of 1848? If so, do you recollect taking a portion of that from where Mr. McClane was keeping batch?

Ans. That is news to me. I knew nothing about it.

Q. Are you in anywise related to J. D. Boon by affinity or blood? and if so, state how?

248 Ans. Mrs. Boon is my sister and Mrs. McClane is my step-daughter.

Q. What is your age, madam?

Ans. I am 28.

Q. What is Mrs. McClane's age?

Ans. She is 21 or 22 or 23; I can't tell exactly.

Q. Did John B. McClane ever sell or convey the claim in dispute or any interest in it to L. H. Judson?

Ans. I think he did sell him a portion at the mouth of Mill Creek. I think he sold all the place to Judson before starting to the States, and found he could not make a title to it, and took it back; and when McClane took the claim back Judson reserved the half of six acres at the mouth of the creek.

Q. Is this all the sale or transfer of the claim from McClane to Judson that you know anything about?

Ans. It is.

Examination in chief resumed.

Q. Previous to Judson's sale of the claim to McClane was the house in which Boon now lives known as the Judson house or the McClane house?

Ans. It was called Judson's house.

249 Q. Is that the same house that in a former answer you term our house?

Ans. It is.

Cross-examination resumed.

Q. Will you file with this deposition the paper which you hold in your hand, to which you refer in answering questions? If so, give it to the commissioner to take depositions to have it attached.

Ans. I don't think it is necessary.

(Signed) NANCY JUDSON.

TERRITORY OF OREGON, *County of Marion, ss:*

I, B. F. Bonham, justice of the peace in and for said county, do hereby certify that the within deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 26th day of November, 1857, at 8 o'clock a. m., in pursuance of notice; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by her.

Dated at Salem, O. T., the 26th day of November, 1857.

B. F. BONHAM, *Justice of the Peace.*

250 STATE OF OREGON, *County of Marion, ss:*

SALEM, O'G'N, *Feb. 17th*, 1863.

It is hereby agreed by and between the counsel and attorneys in the case of John B. McClane *vs.* J. D. Boon, and John D. Boon *vs.* J. B. McClane, both pending in the circuit court of the State of Oregon for Clackamas County, that this deposition of Mrs. Nancy Judson, now Mrs. Nancy Staples, taken on the 26th day of November, 1857, by said parties, may and shall be used in evidence on part of said John D. Boon on the trial of both said causes as the deposition of Mrs. Nancy Staples, subject to all legal objections as to the relevancy, competency, materiality, and admissibility of the matter and form of questions in said deposition contained.

J. G. WILSON, *Att'y, &c., for Boon.*
J. S. SMITH, *Att'y for McClane.*

251 Deposition in the matter of the contest of land claim between John B. McClane and John D. Boon.

TERRITORY OF OREGON, *County of Marion, ss:*

Thomas Cox, being first duly sworn, deposes and says:

Q. State what time you came to Oregon.

Ans. I came the 12th day of October, 1847.

Q. Are you acquainted with the land claim in dispute?

Ans. I am.

Q. Who was the claimant of the land when you first came to the country?

Ans. I understood it was Judson's claim?

Q. Do you know the fact of the absence of McClane to California in 1848 and 1849?

Ans. I do know that he was absent in California part of the year 1848 and 1849.

252 Q. What, if anything, do you know of his seeking for a land claim after his return?

Ans. He called at my house and said he was hunting for a land claim; a timbered claim, he said.

Q. Was any one with him?

Ans. Judson was with him.

Q. State, if you recollect, what conversation took place relative to getting a claim.

Ans. They said they were hunting for a claim on the Santiam Bottom. They wished a timbered claim, and I understood it was for McClane.

Q. What time was this?

Ans. I think it was in the latter part of the spring or forepart of the summer of 1849.

Q. How far was your residence from the claim in dispute?

Ans. They call it 9 miles.

Cross-examination.

253 Q. Who was residing on the claim in dispute when you first came to the country?

Ans. McClane.

Q. Where was Mr. Judson at this time?

Ans. I don't know where he was; he was not at home.

Q. Did you not understand that the claim in dispute belonged to Judson and McClane when you first came to the country?

Ans. I understood that it belonged to Judson alone.

Q. Did you not understand after you came to the country that this claim in dispute belonged to Judson and McClane?

Ans. I don't know about the claim, but the mill, I understood, belonged to McClane and Judson.

Q. Are you in anywise, either directly or indirectly, interested in the claim in dispute or any portion of it?

Ans. I don't know that I am; I am stockholder in the factory.

254 Q. Are you the owner of any land or part owner of any land or anywise interested in any portion of the land within the bounds of the claim in dispute? If so, state the particulars of your ownership or interest.

Ans. I don't know that I am, except the factory there, and I don't know that that is.

Q. Have you any ownership or interest in the land upon which the factory stands?

Ans. No more than any other stockholder in the factory.

Q. To whom does the land belong upon which the factory stands?

Ans. I don't know.

Q. Is the factory on the claim in dispute?

Ans. I don't know that it is; I don't know where the lines are.

Q. Where did Judson reside after you first came to the Territory?

Ans. The first I knew of him he was in the house where Boon now resides.

Q. When did he first move there?

Ans. I don't know.

255 *Examination in chief resumed.*

Q. Did you or did you not on your first arrival in the country have dealings with McClane, and did he or did he not represent himself to be the agent of Judson?

Ans. I had; I rented a house of him, which he said was Judson.

Q. Was it before or after that time that you found Judson and family residing in the house in which Boon now resides?

Ans. It was after.

Q. Was McClane at that time a married or single man?

Ans. He was a single man.

Q. Who else, if anybody, was residing on the claim in dispute at that time?

Ans. There were several shanties around there; some of them were inhabited, but by whom I don't know, but I think Riley lived there.

Q. Did or did not J. D. Boon reside there?

256 Ans. He resided on the island; I don't know whether that is on the claim in dispute, but it is north of the main channel of the creek.

Q. Was Mr. Boon, the claimant, at that time a married or single man?

Ans. Ans. He was married.

Q. Did he have his family residing there with him?

Ans. He did.

Q. State whether or not Mr. Boon, the claimant, has made it his residence there, and in the house where he now resides from that time to the present.

Ans. He has, with the exception of going to California as McClane did.

Q. State whether or not in Mr. Boon's absence to California he left his household property and family there.

Ans. He did, and they continued their residence there.

Q. State as to the formation of the island spoken of in your testimony, whether it is natural or artificial.

257 It is artificial, and is formed by a bend of the creek and a millrace cut across.

Q. State whether or not the island is entirely north of the natural channel of the creek.

Ans. It is.

Cross-examination resumed.

Q. Was the house spoken of by you as belonging to Judson and rented by you of McClane situated on the land claim in dispute, or was it on Dr. Wilson's claim?

Ans. It was on Dr. Willson's.

Examination in chief resumed.

Q. Do you wish to have it understood that you know exactly where the lines of Dr. Wilson's claim were?

Ans. I do not, but I understood it to be on Willson's claim.

(Signed) T. COX.

258 Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*

TERRITORY OF OREGON, *County of Marion, ss:*

I, B. F. Bonham, justice of the peace in and for said county, do hereby certify that the within deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 25th day of September, 1857, between the hours of 10 and 5 o'clock, in pursuance of notice; that the within-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 25th day of September, 1857.

B. F. BONHAM, *Justice of the Peace.*

STATE OF OREGON, *Marion County:*

FEB'Y 11th, 1862.

It is hereby agreed by and between the counsel and attorneys in the case of John B. McClane *vs.* J. D. Boon, and J. D. Boon *vs.* John B. McClane, both pending in circuit court of State of Oregon for Clackamas County, that this deposition of Thomas Cox, taken on the 25th day of September, 1857, may and shall be used in evidence on part of said John D. Boon in the trial of both of said causes, subject to all legal objections as to the competency, relevancy, materiality, and admissibility of the matter and the form of questions in said deposition contained.

B. F. HARDING, *Att'y for J. D. Boon.*
J. S. SMITH, *Att'y for McClane.*

259 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

J. M. Garrison, being first duly sworn on behalf of plaintiff, deposes and

says that I am acquainted with the parties to the action wherein John D. Boon is plaintiff and John B. McClane defendant; that I have been acquainted with John B. McClane since 1843, and with John D. Boon since the winter of 1845 and 1846. I have been acquainted with the claim in dispute since the fall of 1843.

Ques. 1. Who was the first occupant or claimant of the claim now contested by the parties?

Ans. The first knowledge I had of the claim it was the Methodist Mission claim, and the mills on it was owned by the mission.

Ques. 2. Who succeeded the mission in the possession and occupancy?

Ans. L. H. Judson and Dr. Wilson purchased the claim of the mission in 1844.

Ques. 3. Who next afterwards became the claimant?

Ans. J. L. Parrish purchased of Dr. Wilson the eastern portion of the claim and John B. McClane purchased Dr. Wilson's portion of the mills.

Ques. 4. Is the portion of the claim purchased by J. L. Parrish within the limits of the claim in dispute?

260 Ans. To the best of my knowledge it is not.

Ques. 5. Who was there after the sale of Wilson to Parrish? Was the claimant of the claim in dispute?

Ans. L. H. Judson claimed it, and was known as Judson's claim, with the exception of a part of the mills.

Ques. 6. How long did Mr. Judson continue claimant?

(Objected to as irrelevant.)

Ans. I do not know; my understanding was as late as May, 1849.

Ques. 7. When did McClane purchase his interest in the mills from Willson?

Ans. I think it was in 1845.

Ques. 8. From that time up to May, 1849, did or did not McClane cultivate the soil as claimant?

(Objected to.)

Ans. I have no knowledge of his cultivating the soil as claimant during that time.

Ques. 9. At what time, if any, during that period was McClane absent from the neighborhood?

Ans. From the time of said purchase he was absent in the Cayuse war from Jan'y, 1848, till April, 1848. I understood from McClane he was absent in California from the fall of 1848 until the spring of 1849.

261 Ques. 10. At the time of McClane's return from California or subsequently, had you any conversation with him relative to the land claim in dispute? and if so, what and when?

Ans. I had a conversation with McClane about the claim on or about the middle of May, 1849. I told McClane that I was desirous of purchasing a portion of the claim now in dispute of L. H. Judson. Mr. McClane told me he wished I would hold on, that he wished to purchase of Judson the claim, and that he, McClane, would accommodate me. He, McClane, said Judson had fooled away some of the lots; he said he would not have done it if it had belonged to him. I have detailed the conversation to the best of my recollection.

Ques. 11. State, if you know, in what year McClane was first recognized as occupant and claimant of the claim in dispute?

(Objected to as irrelevant and vague.)

Ans. To the best of my recollection it was in 1851; I heard so from rumor.

Ques. 12. What was the nature of McClane's residence on the claim in dispute at any time previous to his return from California in 1849? Was it that of a household and claimant or not?

(Objected to as leading and incompetent.)

Ans. During the time he was living on the claim previous to his
262 purchase of the mill property he followed tailoring; after his purchase of the mill property he tailored some and worked in the mills and superintended.

Ques 13. Whether at any time before or since 1849, McClane ever had a land claim or claims in Oregon; if so, what and when?

Ans. He claimed a land claim southeast of town three miles, in 1844; he also claimed a claim in a southerly direction from town about three miles, now claimed by the Pugh brothers. As near as I recollect he sold it in 1846.

Ques. 14. From what time have you known John D. Boon and family resided upon and made improvements upon the claim in dispute?

Ans. To the best of my recollection he has resided upon it since 1848; he may have been there before.

Ques. 15. What permanent improvements has Boon made upon the claim now in dispute during his residence?

Ans. One dwelling-house and storehouse upon the island, and a log building now occupied by the woolen manufactory, and he made some improvements upon the dwelling-house where he now resides, also some fencing around the orchard, and a stable.

263 Ques. 16. What improvements has he purchased prior to 1853?

Ans. A building once occupied as a clerk's office, and the house called the Empire Store.

Ques. 17. What should you judge the value of the improvements so made and purchased at the time of making the purchase?

(Objected to as incompetent.)

Ans. I should judge it to be from fifteen to twenty thousand dollars.

Ques. 18. What was done with the mill property on the claim in dispute, by McClane previous to McClane's going to the States?

(Objected to as irrelevant and incompetent.)

Ans. I understood it was sold to Beers, Parrish, and Savage. I understood so from Beers and others, and I think from McClane.

Cross-examination.

Ques. 19. How much of the land was included in Wilson's sale of the mill to McClane?

Ans. If I ever knew I do not know or recollect how much.

Ques. 20. Do you know that it did not include the whole of what you have called in this deposition the Judson claim or an interest in the whole
264 of said claim? If so, how do you know it?

Ans. I understood from Dr. Wilson that he had sold to McClane one half of the mill and mill priviledge. I understood from McClane that he had purchased from Wilson one half of the mill property and one half of the water priviledge of the creek running through the claim.

Ques. 21. Was the mill house in which Mr. Boon now lives included in the sale from Wilson to McClane?

Ans. I do not know how far the mill property extended. After the purchase of Mr. McClane, he lived in the mill house. I never heard either party say it was included.

Ques. 22. How long did McClane continue to occupy that house after the purchase?

Ans. I believe he lived in it continuously from the time of his purchase of the mill property from Dr. Wilson in 1845, until he went to the States, except when he was absent in the Cayuse war and California.

Ques. 23, Was Mr. McClane a volunteer in the Cayuse war?

Ans. He was.

Ques. 24. In the conversation with yourself and Mr. McClane, May, 1849, did not Mr. McClane complain that Mr. Judson had trifled away or sold portions of the claim during his absence?

Ans. I have no recollection of the words "during his absence."

Ques. 25. Did he not say if he had been at home some of those sales would not have been made?

Ans. I do not recollect of any such allusion.

Ques. 26. Do you claim to remember at this distance of time all that was said in that conversation about the land in question?

Ans. I claim to remember the facts as far as I was interested in the conversation. There may have been other conversations; I do not recollect. I made a note as far as I was interested.

Ques. 27. Have you preserved this note?

Ans. I preserved it for a long time; I have not seen it since the December flood, 1861.

Ques. 28. Did you delay seeing Mr. Judson about your proposed purchase at McClane's request?

Ans. I do not recollect of ever naming the subject to Judson, though I think I did before this; if I did, it was while McClane was absent. I do not recollect of having seen Judson for a long time; he was absent.

Ques. 29. At the time of this conversation did you not know Mr. McClane owned, or claimed to own, one undivided half of the claim in question?

Ans. I have no knowledge or recollection of having heard of his claiming anything but the mill property.

Ques. 30. What was your motive in applying to Mr. McClane to purchase land which belonged to Mr. Judson?

Ans. They being in partnership in the mill I supposed he knew where Judson was.

Ques. 31. What particular parcel of land did you propose to buy?

Ans. I have no recollection of telling McClane what portion I wished to buy; but the point of the claim I wished to buy was in the lower corner, on the river.

Ques. 32. Was any one besides yourself and Mr. McClane present at that conversation?

Ans. I have no recollection.

Ques. 33. Have you had more than one conversation with Mr. McClane on the subject?

Ans. I think I have no definite recollection.

Ques. 34. Do you recollect whether Mr. McClane told you where Mr. Judson was at the time of the conversation alluded to above?

Ans. I have no definite recollection; I think he said he was at Clatsop.

J. M. GARRISON.

STATE OF OREGON, *County of Marion*, ss:

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 10th day of February, 1862, at 1 o'clock, in pursuance of adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Given under my hand this 10th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Filed Mar. 3d, 1862.

JAS. WINSTON, *Clerk.*

268 Circuit court, State of Oregon, Clackamas Co.

JOHN D. BOON
vs.
JOHN B. MCCLANE.

Samuel Parker, being first duly sworn on behalf of plaintiff, deposes and says that I am acquainted with John D. Boon and Jno. B. McClane, the parties in this contest; that he resides near Salem, in Marion County; that I have known the parties to this contest since the fall of 1847, and that I am acquainted with the land claim in dispute.

Ques. 1. From 1847 to 1851 who was the occupant and claimant of the land in dispute?

Ans. L. H. Judson.

Ques. 2. State what opportunities you had of knowing who was occupant and claimant of the said land claim during that period.

Ans. In the spring of 1848 or 1849, I think it was, John D. Boon and myself was about to purchase a part of the claim in dispute. In that purchase Mr. Judson said that Mr. McClane held one half of the mill, and one half the mill privilege of the mill. Mr. Judson was about to sell to us a part of the claim, and said McClane's interest was only one half of the mill and mill privilege to that mill; and said that McClane did not own any of the land except a half of a small portion that belonged to the mill. Mr. Jud-
269 son described the whole piece, but he does not recollect but one corner; the corner was close to a building or lot then owned by Riley and Kendall, or since owned by them.

Ques. 3. What further have you known relative to that claim being claimed by Judson during that period?

(Objected to as irrelevant.)

Ans. In 1848 or 1849 Mr. Judson, Mr. Rector, myself, and, I thought, some others, went up to the Santiam River, to where the Willamette Company ditch is now. While there Mr. Judson pointed to a claim, and said that McClane once owned that claim, but then it was forfeited.

Ques. 4. State further if you have any means of knowledge Judson's claiming the claim in dispute during that period; if so, what?

(Objected as irrelevant.)

Ans. About the time that W. W. Chapman was about to purchase a part of the mill property on the claim in dispute, about 1849, Mr. Judson stated to me that McClane was to take a timbered claim for the benefit of the mill; that he had failed to take the claim until the best timbered claims were gone, up the Willamette River that McClane failed to take any claim, and said he thought McClane out not to have any of the claim in dispute. There was a contract between them to that effect. At another conversa-
270 tion afterwards, near Mill Creek, I understood from him, McClane, that he had gone up the Willamette River to look for a timbered claim; that there was no claim there worth anything; that he would have to make up the difference between the claim. He stated at that time that McClane owned one half of the mill, with the privilege to the same; he had promised to let McClane have one half the land claim in dispute, provided he, McClane, would take a good timbered claim up the Willamette River, but said McClane failed to do so until a portion of the timber was taken off; now, if he took one, he must make up the difference.

Ques. 5. If anything, state what Mr. McClane and Judson told you about going up the Willamette River to take a timbered claim, and where it was.

(Objected to as incompetent and irrelevant.)

Ans. Previous to the last conversation, (my impression is it was after McClane came back from California,) I heard him, Judson and McClane both,

say they were going up the Willamette River to look for a timbered claim, but did not see them go; and Mr. Judson told me afterwards they had been up; this was in 1848 or 1849; my impression it was 1849.

Ques. 6. Who was to hold that timbered claim, Judson or McClane?

(Objected to as irrelevant.)

Ans. I understood that it was McClane.

271 Ques. 7. Did McClane, from your knowledge, claim and perfect title to any claim?

Ans. Not to my knowledge.

Ques. 8. State whether at any subsequent time you had any farther conversation with Judson relative to holding the claim in dispute; if so, when, where, and what was it?

(Objected to as incomplete and irrelevant.)

Ans. The latter part of June, 1849, I was at Milwaukie, Clackamas Co.; Mr. Judson came there in a little boat on his road to Clatsop, the mouth of the Columbia River. He told me that McClane had purchased some property down there; that he was going down to improve it. My impression is he said something about building a mill on it. I asked him if he expected to move down there; he said he thought he should. I then asked him if he had sold his claim up here; he said he had not, nor he did not think he would, as he thought too much of it; he wanted to make it his home.

Ques. 9. From what time have you known J. B. McClane to be the claimant of the claim in dispute?

(Objected to as incompetent and irrelevant.)

Ans. I think it was in August, 1851; I was down at the mill in

272 the mill yard. Mr. McClane had returned from Clatsop, and he told me that he had purchased the claim of Judson, and now he was the owner of that *illahee*, meaning that land claim.

Ques. 10. From that time to what period was McClane occupant and claimant of the claim in dispute?

Ans. He resided upon that claim until 26th March, 1853. I am certain of that time, for the reason that I was acting as justice of the peace, and there was a trial of a criminal case before me of one Sellers. At that time he started to go to the States.

Ques. 11. State, if you know, when McClane went to California and when he returned.

Ans. My impression is that it was the last of September or first of October, 1848, and returned the 19th or 20th of May, 1849.

Ques. 12. From 1847 to August, 1851, what do you know of the ownership of the mill property on the claim in dispute, or what did you learn of it of McClane or Judson, if anything?

(Objected to as incompetent and irrelevant.)

Ans. I understood from Mr. Judson that McClane owned one half of the mill, and the water priviledge to the same, and a half what was called

273 the mill yard, a small piece of land. I understood from Mr. McClane he owned one half of the mill and all the water priviledge from the mill down the creek to the river, together with a larger piece land down the creek.

Ques. 13. After August, 1851, what, if anything, did you understand from Mr. McClane as to the said mill, and the whole of the ownership of the land claimed?

(Objected to as vague and indefinite.)

Ans. I understood from him he owned both.

Ques. 14. Previous to McClane's going to the States in March, 1853, what, if anything, do you know of the disposition he made of said mill property and of his land claim?

Ans. He sold the mill property to Beers, Parrish, and Savage for fifteen thousand dollars, and the land claim to Mr. Judson, or so created Judson agent; so I was informed by Mr. McClane.

Ques. 15. Previous to 1850 what do you know, if anything, relative to McClane's claiming or holding any land claims in Oregon; if so, when?

Ans. Mr. McClane told me one day, going up Mill Creek, that he had owned a claim called the "Carter claim," now owned by E. Garrison;
274 that he lived there and kept batch a while; I do not recollect the year, but it was previous to 1848; he also told me he had owned a claim then held by one of the Pughs. I understood that he had disposed of both of the claims previous to the conversation, which was in 1848.

Ques. 16. From what time has John D. Boon resided upon the claim with his family in dispute?

Ans. He resided upon it since the fall of 1847, with the exception of a few weeks in 1849, upon a claim in the hills, known as the Powell claim.

Ques. 17. From that time to the present what permanent improvements has he made or purchased on the claim in dispute?

(Objected to as incompetent and irrelevant.)

Ans. He built a blacksmith shop and a coal-shed near the bridge; a dwelling-house and storehouse. He built another house, called the Island House, now owned by the Woolen Company. He purchased a house called the Empire Store; he also purchased or built a small house, also a brick store two stories high. These improvements are all on the island, on the part of the claim in dispute. He covered the house he lived in and painted it; he made some fencing, planted out some fruit trees, built a wood-house and
275 stable. These improvements, outside of those on the island, were worth about twelve or fifteen hundred dollars; those on the island were worth from twenty to two thousand dollars at the time the improvements were made.

Ques. 18. From whom did J. D. Boon receive possession of the land in the claim in dispute, on which most of the improvements as mentioned upon the island was made?

Ans. The knowledge I have, he got most of it from L. H. Judson, one lot from Holman, and one lot from McClane.

Ques. 19. At what time did McClane become a married man?

Ans. It is my impression it was on the 9th day of May, 1849.

Cross-examination.

Ques. 20. What was the reason that you and Mr. Boon did not purchase part of the claim in dispute from Judson?

Ans. My own reason was this, that when the writings came to be drawn they were not in accordance with the bargain, and that I had understood that McClane claimed, either by him or somebody else, the priviledge down the creek. I was doubtful whether Judson had a right to sell Mc-
276 Clane's interest in the mill without McClane's consent.

Ques. 21. What is the present value of the improvements made by Mr. Boon on the claim in dispute outside of the island?

Ans. Worth about seven or eight hundred dollars at the present time.

Ques. 22. Was there not a board fence at or near the fence erected by Mr. Boon, concerning which you testified?

Ans. There was.

Ques. 23. Do you know of Mr. Boon moving or selling building or buildings off the claim in dispute?

(Objected to by comp't as incompetent, irrelevant, and indefinite, not responsive to the pleadings.)

Ans. I know of him selling a building.

Ques. 24. Who built that building?

Ans. Mr. McClane hired me to build the building and paid me for it.

Ques. 25. What was that building worth?

Ans. My impression is that he paid me eight hundred dollars at the time it was moved. I considered it worth four hundred dollars. It was moved up to South Salem.

277 Ques. 26. What was the value of the material in that building at the time it was erected?

Ans. It was worth about three hundred dollars, exclusive of the framing timber.

Ques. 27. At what time was the brick store referred to in your examination in chief built by Mr. Boon?

Ans. I think it was built in 1860.

Ques. 28. Were not all the buildings erected by Mr. Boon on the island built upon ground he had purchased from Judson or Judson and McClane?

Ans. I have no recollection of knowing of but two lots that buildings were on bought of Judson, and one of McClane, which there is no building on. I do not know of any buildings on the island built by Boon. I presume the lots were bought of Judson and McClane.

Ques. 29. Why do you estimate the value of the building sold by Mr. Boon at so low a price as four hundred dollars?

(Objected to as incompetent.)

Ans. My reason is that it was built for a warehouse, and the river so effected the house it was not fit for that purpose, and it was on a

278 part of the claim where no one would wish to live in it; and it would take an amount of labor to secure it from a rise in the river, I understood. When I was asked the value of the house, I took all these things into consideration and answered it accordingy. The building was erected in 1852, and my impression is that it was moved in 1855.

Examination in chief resumed.

Ques. 30. In your estimate made in your cross-examination of the present value of the improvements made upon the claim in dispute by Boon apart from those on the island, did you estimate and include the present value of the fruit trees planted by Boon, and now growing there?

Ans. I did estimate all.

SAMUEL PARKER.

STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 10th day of February, 1862, between the hours of 10 o'clock a. m. and 10 o'clock p. m. of said day, in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Given under my hand this 10th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

We agree that the foregoing deposition of Samuel Parker may be used on the trial and hearing of both and either of the causes now pending in Clackamas County circuit court, wherein in one of which J. D. Boon is complainant and J. B. McClane is defendant, in chancery, and the other in which

J. B. McClane is plaintiff and J. D. Boon is def't, action at law, subject to all legal objections for incompetency, inadmissibility, and irrelevancy.

Feb. 10th, 1862.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *Att'y for Boon.*

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*
W. C. Y., *Deputy.*

279 To John B. McClane, def't, or to his attorney, J. S. Smith:

You are hereby notified that on Saturday, the 1st day of February, A. D. 1862, at 10 o'clock a. m., and continuously therefrom until finished, at the office of and before C. N. Terry, justice of the peace in and for the county of Marion, State of Oregon, Salem precinct, at Salem, I shall take the depositions of Nathan T. Caton and other witnesses, to be used as evidence on the hearing of the cause wherein I am complainant and you defendant, in chancery, now pending in the circuit court of the State of Oregon for Clackamas County, and more than twenty miles from the place of holding said court. You may attend and cross-examine said witnesses if desired.

Salem, Oregon, Jan. 28th, 1862.

JOHN D. BOON.

STATE OF OREGON, *Marion County, ss:*

I certify that on the 28th day of January, A. D. 1862, at Salem, Marion County, I served the within notice by delivering a copy thereof personally to J. S. Smith, the attorney of record of J. B. McClane, def't, and that I am a white person above the age of twenty-one years.

O. N. DENNY.

Subscribed and sworn to before me, at Salem, Oregon, this 28th day of January, A. D. 1862.

J. G. WILSON,
Clerk of the Supreme Court of Oregon.

280 William H. Judson, being first duly sworn, deposes and says that I am a son of Lewis H. Judson, and John B. McClane's wife is my half-sister, and that I am fifteen years old the 22d day of this month. My present home is in King's Valley, Polk County. I am acquainted generally with the land claim in dispute between John B. McClane and John D. Boon. I had a conversation with my father, Lewis H. Judson, in relation to his being a witness in the controversy between Boon and McClane, in reference to the land claim. The conversation was near Vancouver, in Washington Territory, in the spring of 1860, where I was then living. L. H. Judson told me that Logan, McClane's lawyer, had told him, Judson, that he could not be a witness unless he was disinterested, and unless he sold out his, Judson's, interest in the claim. He told me that he had sold out to McClane in order to become a witness. He told me that the interest was a piece of land he owned on Mill Creek, on the claim now in contest. He told me that if McClane was to gain the suit, he, McClane, was to give him, Judson, two thousand dollars. He, Judson, said he was to be a witness for McClane, and he thought the side he was upon would gain the suit.

Cross-examination.

I do not know what the interest of Judson was worth in the claim at that time. In the conversation referred to, Judson said nothing about
281 being a witness for Boon. I do not live with my father. I live with my mother. My mother and father are now divorced. L. H. Judson

is entitled to my custody as his natural guardian. I do not live with my father, on account of ill treatment. At present feel well disposed towards my father, but I am not willing to live with him.

Examination in chief resumed.

At the time of the conversation referred to above I was living with my father. At a conversation at Clatsop Co., Oregon, where we were living after McClane returned from the States, in which my mother asked my father who he intended to be a witness for, whether Boon or McClane, and he said he would be a witness for Boon. My father and mother were then living together.

Cross-examination resumed.

The last conversation referred to between my father and mother, it was expected that Boon would have my father for a witness for him. At this same conversation he expressed no preference to be a witness for one party more than the other.

WILLIAM H. JUDSON.

282 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on 1st day of February, 1862, at 10 o'clock, in pursuance of notice; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Given under my hand this 1st day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*
W. C. Y., *Deputy.*

283 Circuit court, State of Oregon, Clackamas County.

JNO D. BOON
vs.
JNO. B. MCCLANE.

J. L. Parrish, being first duly sworn on behalf of the plaintiff, deposes and says that I am acquainted with the parties to this suit, John D. Boon and Jno. B. McClane. I became acquainted with McClane in the fall or winter of 1843, and with Mr. Boon as early as 1847, in and about Salem, and am acquainted with the land claim in dispute, and have been since 1840. I have resided three years about ten miles from Salem—in 1840, '41, '42, and until June, 1843; then moved to Clatsop, and resided there from June, 1843, to Feb., 1846, and then returned to Oregon City, 1846, and my family resided there until August or September of that year. During the time I resided at Clatsop and Oregon City I was at what is now Salem a number of times, so I knew most of the business transactions in and about what is now Salem until I removed to Salem in August or September, 1846. I resided at Salem, my present residence, from August or September, 1846, to October, 1849. I then went with my family to Portland, where I was with my family most of the time until the first of November, 1850. I then returned to Salem with my family on my present residence, where I have resided most of the time.

Ques. 1. State if you purchased any property near Salem in 1846; and if so, of whom and what was it?

Ans. I purchased about thirty-five acres of land after the 25th of
284 June, 1846, of L. H. Judson, lying on north side of Mill Creek, being the north side of Salem, which thirty-five acres was a part of the land claim now in dispute. It was a part of the land claim on which the Salem mills were erected, then in the possession of L. H. Judson and J. B. McClane. McClane and Judson were partners in the mill, and the claim was called the Judson claim, to distinguish it from other claims with which it had been connected in a record of the provisional government of Oregon.

Ques. 2. At that time (1846) who was the claimant of the land claim of which you bought a part?

Ans. Lewis H. Judson professed to be, but McClane was with him on the claim and professed ownership or exercised acts of ownership with Mr. Judson, but in the purchase that I made of the thirty-five acres I negotiated with Mr. Judson alone. I received an article of conveyance from Mr. Judson and signed by L. H. Judson and myself. I agreed to pay him two hundred dollars and he agreed to make me a conveyance, which two hundred dollars I did pay to L. H. Judson and J. B. McClane.

Ques. 3. State if you have that agreement.

Ans. I do not think I have. I think, by the request of the parties in the dispute of this land claim, I allowed them to take said agreement
285 and file with other papers to be sent to Washington. The deposition to which said agreement was attached was taken by B. F. Bonham, a justice of the peace for Salem precinct. This deposition was taken about September, 1857.

Ques. 4. From the time you purchase said land who did you understand was the claimant of that claim, and how long, if you know?

(Objected to by McClane as incompetent.)

Ans. At the time I purchased a piece of the claim it was called and said to be the Judson claim. When Mr. Judson relinquished all his interest in said claim I do not now recollect, if I ever knew.

Ques. 5. State when it ceased to be called the Judson claim or known as such.

Ans. It never has ceased to be known and called the Judson claim by the old settlers, though for some years it has been in dispute between McClane and Boon.

Ques. 6. State, if you know, in whose name the claim was recorded under the provisional government.

(Objected to as incompetent.)

Ans. I supposed it was recorded in the name of L. H. Judson. I knew it from Mr. Judson. He said he had it recorded in his name.

Ques. 7. At the time of your purchase of the land aforesaid from L. H. Judson what was said about claiming the claim in dispute?

(Objected to by McClane as incompetent and inadmissible.)

286 Ans. Mr. Judson said it was his claim, but that McClane had an interest or a prospective interest in the claim. It was notorious that Judson and McClane were in partnership in that claim. Judson remarked that by an understanding between him and McClane that McClane was to take another claim, a timbered claim. McClane was to take the timbered claim for the benefit of the partnership. I think Judson told me he had a right to sell me that piece of land.

Ques. 8. State, if you know, how Judson became the owner and possessor of that claim, and how McClane became interested in any way, prospectively or otherwise.

(Objected to by McClane.)

Ans. Mr. Judson and W. H. Willson had purchased from John Force that claim, together with the claim I now hold, lying east of North Salem. This

I think was about 1845, or the fall of 1844. Dr. Willson had after that sold the claim in dispute.

Ques. 9. State what division, if you know, Dr. Willson and Judson made of those two claims.

(Objected to by McClane as incompetent and irrelevant.)

Ans. Dr. Wilson previous to his sale reserved the claim I now have to myself, and the other claim was held by Judson or Judson and McClane.

Ques. 10. In the sale refered to what did Dr. Wilson sell to McClane?

(Objected to by McClane.)

287 Ans. He sold all his interest in the mills. I do not know whether he sold all of his interest in the claim. I know some of the claim was then sold with the mills.

[A copy of his former deposition was here handed to him, Parrish, in the controversy in this same matter, between the same parties, for him to read and look at, to which McClane objected and ask that the fact of his objection be here noted.]

Ques. 11. What interest did Dr. Wilson have, if you know, in the mills at the time he sold to McClane?

(Objected to by McClane as incompetent.)

Ans. I supposed he owned one half of the mills and the land connected with the mills, the amount of which I do not know. There was a pasture connected with the mills of some forty or fifty acres on the west side of a road or street running north from the mills. Also an enclosure east of the mills of some ten acres or more, part of it cultivated. I think the present pasture east of the mills was not enclosed to the extent it now is, but within the enclosure was a cultivated plat containing a garden of vegetables.

Ques. 12. If you know about the time of laying out the town of North Salem on the claim in dispute, state by whom it was done and who was interested in it.

288 Ans. I believe it was done by Judson and McClane. I think it was in the year 1850. I supposed they were equally interested in it. I think at the time it was laid out I learned from them they were equally interested.

Ques. 13. State, if you know, when Mr. Judson's family left the claim in dispute.

Ans. I think it was in 1850. A part of the time before 1850 he lived on the South Salem claim.

Ques. 14. In what years was J. B. McClane the recognized claimant of the claim in dispute when he was recognized and known as such by purchases of lots and town property on the premises in dispute?

(Objected to by McClane as incompetent.)

Ans. It was either in or after 1850, until after he went to the States?

Ques. 15. What do you know of the disposition of the mill property by McClane previous to his going to the States?

Ans. McClane sold the mills and water priviledge, together with probably six acres of land, and the undivided half of another water priviledge, together with the undivided half of about six acres of land lying near or at the mouth of Mill Creek, to Alonzo Beers, deceased, M. L. Salvage, and myself, on the 26th day of January, 1853, for fifteen thousand dollars.

Ques. 16. In the years 1848 and 1849, state if you know whether the boundaries of the land claim in dispute embraced any land on the south side of Mill Creek.

289 Ans. I think they did.

Ques. 17. State whether your deposition has been heretofore taken in reference to the land claim in dispute between the parties.

Ans. I think it has been two different times. I presume it was about

1857, before B. F. Bonham, a justice of the peace in Salem, at the court-house.

Ques. 18. State at the time of taking of either of those depositions whether a paper was exhibited to you in reference to a sale or transfer of lands on the south side of Mill Creek, once reported to belong to the land claim in dispute. If so, state by whom it seem to have been executed, and to whom.

(Objected to by McClane as incompetent and inadmissible.)

Ans. I am of the impression that such a paper was exhibited to me executed by L. H. Judson and W. H. Wilson, the date of which I have no recollection.

Ques. 19. State, if you know, where Mr. Boon has resided since 1850.

Ans. He has resided in North Salem, on the claim in dispute.

Ques. 20. Since 1853 state, if you know, whether Mr. Boon has cultivated the claim in dispute, or any portion thereof, each year.

Ans. I think he has, a portion each year.

290 *Cross-examination.*

Ques. 21. State what connection the Judson claim had with other claims on the records of the provisional government, or in any way.

(Objected to by Boon as incompetent, irrelevant, and immaterial.)

Ans. It was recorded with four other claims on the records of the provisional government. It must, I think, have been in 1845. These claims were understood by me to be held in partnership. The partnership was dissolved in 1845, I think.

(This answer objected to by Boon as incompetent and immaterial.)

Ques. 22. Was not Mr. Judson absent at Clatsop at the time said partnership was dissolved?

Ans. I do not recollect.

Ques. 23. In the conversation with Mr. Judson in which you learned that the claim in dispute was recorded in his name, are you sure that he said that he had the claim recorded in his own name? Did he not say, rather, that the claim was recorded in his name?

Ans. I do not recollect which.

Ques. 24. Did the enclosure which existed on the claim in dispute at the time of the purchase by McClane of Wilson's interest lying east of the mill include that house afterwards occupied by McClane, and in which

291 Boon now lives?

Ans. It did.

Ques. 25. Who cultivated the garden in that enclosure after the purchase by McClane?

Ans. It was cultivated by McClane, by his own hands, and also by others.

(The last question and answer objected to by Boon as incompetent, and not responsive, and too indefinite.)

Ques. 26. Did McClane, from and after his purchase of Wilson's interest, exercise acts of ownership and control over the enclosed portions of said claim to as great an extent as Mr. Judson?

Ans. I should think he did.

Ques. 27. Did you at any time prior to the laying off of the town site on said claim, and after the purchase by you from Mr. Judson, in 1846, offer to purchase any portion of said claim not included in the enclosures existing at the time, of McClane's purchase from Wilson? If so, state the facts.

(Objected to by Boon as incompetent and too indefinite.)

Ans. I offered to purchase from Mr. McClane ten acres of ground outside

of said enclosure, probably in 1847. The reason I did not buy it, I thought he asked too much for it.

(Objected to by Boon as incompetent.)

292 Ques. 28. In your examination in chief, when you say that Mr. McClane was recognized as claimant of the claim in dispute by lot-holders, after 1850, do you mean that after that time he was recognized by them as sole claimant, or what do you mean?

Ans. He was recognized as sole claimant after that time. I supposed him to be. I suppose he was not sole claimant until he bought out Judson's interest.

Ques. 29. Do you know that Mr. Judson executed and delivered the paper which you say was shown you on your former examination as a witness between the parties to this suit?

Ans. I do not. I believe it to be Mr. Judson's handwriting, with which I was familiar.

Ques. 30. Are you acquainted with the land described in that paper?

Ans. I am.

Ques. 31. Do you know of any arrangement between Dr. Wilson and Judson and McClane, or either of them, for an exchange of other lands now included in the claim in dispute for the lands described in that paper?

(Objected to by Boon as irrelevant and incompetent.)

293 Ans. I think I learned from the parties, Wilson, Judson, and McClane, of an exchange of a portion of land for that piece. The portion of land so exchanged is on the claim in dispute.

Ques. 32. Are you the Josiah L. Parrish who was a witness for Mr. McClane in the land office in making his final proof of four years' residence and cultivation upon said land claim?

(Objected to by Boon as incompetent and not responsive to ex. in chief.)

Ans. I am.

Ques. 33. Did you make a false affidavit for Mr. McClane at that time, before the surveyor general of Oregon?

(Objected to by Boon as incompetent, irrelevant, and inadmissible.)

Ans. I believed then I swore to the truth. I now believe I then swore to the truth according to my views of the land law.

(The defendant, McClane, here makes J. L. Parrish his witness.)

Ques. 34. Did you at any time hear Mr. Boon make any statement with reference to his object in taking and claiming the land claim in dispute? If so, state what and when.

(Objected to by Boon as leading.)

294 Ans. At the time Mr. Boon took the land claim he stated his object was to secure himself in what property be purchased of McClane and Judson, and prevent other persons jumping it. Mr. Boon also stated that on the return of McClane, that if McClane would pay what costs he had been to, McClane should have the claim. This he stated to me a number of times as we were on the way to Oregon City, and afterwards. I was with him when he was on the way to file his notification.

Ques. 35. State, if you know, whether Mr. Boon had an attorney to assist him in holding said claim at or about the time of filing his notification. If so, who was his attorney?

(Objected to by Boon as incompetent and irrelevant.)

Ans. I think he had an attorney, Judge O. C. Pratt.

Ques. 36. Were you present at any interview between Mr. Boon and said Pratt during which any conversation was had between them in reference to Mr. Boon's claiming said claim? If so, state what occurred.

(Objected to by Boon as incompetent.)

Ans. Mr. Boon and said Pratt were at my house one evening a short time

previous to Mr. Boon's entering the claim. Conversation was had between Mr. Boon, Pratt, and myself, relative to the probability to McClane's,
295 loosing his claim. Mr. Pratt advised that one dollar and a quarter should be paid to the land office for McClane in order to hold the claim under the provisions of the land law; that an occupant of two years could pay that much and secure title. Judge Pratt stated that he had seen the claim, and Mr. McClane had requested him to see to his, McClane's interest in the land claim, which he felt bound so to do, and if Mr. Boon and myself would pay the one dollar and a quarter per acre to him as our attorney, he would pay it into the land office for McClane, which money Boon and I paid him, Boon paying two hundred dollars and myself two hundred dollars. A few days afterwards it was judged or thought by paying one dollar and a quarter per acre in the land office it would not secure the claim to McClane, for he had not made his application as a two years resident. I do not know whether this last conversation was with Boon, Pratt, and myself or with Boon and myself. It was Judge Pratt's opinion, at Oregon City, that the paying one dollar and a quarter per acre would not secure the claim to McClane. He gave it as his opinion that it would be best for Mr. Boon to record the claim in his own name, as Mr. Boon signified to Pratt, in my presence, that he, Boon, would not hold the claim adversely to McClane, provided that McClane returned from the States and pay the
296 costs and expenses he had been to.

(Objected to by Boon as incompetent, reporting conversations of witnesses and divers other individuals.)

Ques. 37. Did or did not Mr. Boon authorize or direct Judge Pratt to make any communication to McClane in relation to holding the claim by Boon? If so, state what.

(Objected to by Boon as incompetent, irrelevant, inadmissible, and not the best testimony.)

Ans. Judge Pratt stated that he would so write McClane and advise him of the position of his claim here. Mr. Boon stated that he might say to McClane that he had no intention of wronging him out of a foot of his claim; what he had done in entering the land claim he had done to protect his property against Riley or others in jumping the claim, but if McClane returned and paid him for his expense and trouble he should have the claim.

Ques. 38. State whether or not, when you appeared as a witness before the surveyor general of Oregon, the absence of Mr. McClane from said claim to the Cayuse war and California, or either of said absences, was concealed from said surveyor general.

(Objected to by Boon as incompetent.)

Ans. Both of these absences were definitely explained to the surveyor general of Oregon, by J. B. McClane, W. H. Wilson, and myself, at
297 the time of McClane's application and final proof.

(Objected to by Boon as incompetent.)

Cross-examination.

Ques. 39. Are those items of absence or either of them embodied in your affidavit at that time made by you for McClane's proof?

Ans. I think from a subsequent examination they were not; at the time I thought they were.

Ques. 40. Is there anything in that affidavit then made relative to what you have stated to-day about partnership of Judson and McClane?

Ans. I do not think there is.

Ques. 41. Was not Judge Pratt, at the time referred to by you in your

examination in chief, the attorney of McClane, and did he not say he could not be an attorney for you and Boon, or Boon only, that he would pay the money in the land office for you?

Ans. I do not recolleet of Pratt's objecting to being our attorney, or Boon's attorney; that Pratt had seen McClane and McClane wished him to see to his interest in the claim. It was a matter of doubt. I do not know that McClane feed him, but had no doubt that he would advise McClane and defend his interest, expecting McClane would pay him for it. He
298 was just as ready to advise Mr. Boon and myself, understanding and believing at the time that neither of us had any intention of wronging Mr. McClane.

Ques. 42. State if at that time you had learned the facts that some other persons would jump the claim in dispute.

(Objected to by McClane as irrelevant and incompetent.)

Ans. I think I learned from Mr. Boon that a Mr. Thomas had probably gone to Oregon City, or he believed would go soon, to enter said claim, and if Thomas did not he believed Riley would. Dr. Wilson told me that the claim was in jeopardy, and that other persons would jump it. Dr. Wilson came to my house, told me so. This was the W. H. Wilson that who was with us as a witnesss when McClane proved up.

Ques. 43. With that knowledge did you not advise Boon to take the claim?

(Objected to by McClane as irrelevant.)

Ans. I did advise Mr Boon to take the claim, with the understanding he, Boon, was to fulfil all the obligations McClane had entered into with purchasers on the claim, and that he, McClane, returning and paying the costs and trouble, should have his claim, which Mr. Boon said he would do, and I went with him to Oregon City.

299 *Ex. in chief resumed by McClane.*

Ques. 44. Was or was not any reference made to the former partnership in the land claim in dispute between Judson and McClane at the time of making McClane's final proof, and in the hearing of the surveyor general of Oregon, or by said surveyor general himself?

(Objected to by Boon as incompetent and inadmissible.)

Ans. There was a reference to the partnership of J. B. McClane and L. H. Judson before the surveyor general. The inquiry was made by the surveyor general to John B. McClane, W. H. Wilson, and myself, when reference was had to McClane's absence to California, whether McClane's partner, Mr. Judson, was on the claim carrying on business for the partnership. We answered he was. I do not remember of the surveyor general's making any reply; it seemed to be all satisfactory.

(Objected to by Boon as incompetent.)

Ex. in chief by Boon.

Ques. 45. Describe the piece of land contained in the writing referred to in your deposition, made by Judson to W. H. Wilson, and in your cross-examination referred to as having been given in exchange for a piece in the disputed claim.

300 Ans. I think the piece spoken of is on the south side *side* of Mill Creek, at its mouth; including half of its mouth. There was from ten to fifteen acres, I think.

J. L. PARRISH.

STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for said county, do hereby

certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, between the hours of ten o'clock a. m. and five o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 22nd day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clk.*
W. C. Y., *Deputy.*

301 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

J. G. Wilson, being first duly sworn on behalf of the plaintiff, deposes and says that I am acquainted with the parties to this suit; with Boon since 1853, and McClane since 1856; with the premises since 1853. In 1857 I was one of the administrators of the estate of Dr. W. H. Wilson, deceased, and am so still. At that time there was in my hands as such officer a written contract purporting to have been signed by T. H. Judson, with whose handwriting I was familiar at that time, 1857; that at the request of the attorneys of J. D. Boon I consented that the contract should be annexed to J. L. Parrish's deposition, taken in November, 1857, before B. F. Bonham, justice of the peace, referred to in his, Bonham's, deposition. I made a copy of the contract, to be kept with the papers of the administration, and the paper hereto annexed, marked A, is that copy, which is a true and correct copy of that contract. I believe that I have three times applied to the land department at Washington City for the original and have been unable to procure it; and I am informed and believe said department will not let the original go; also, that the letter hereto annexed, marked B, is a letter from the land department at Washington City, addressed to J. D. Boon by the Act-
302 ing Commissioner, for the reason, I believe, that the signature thereto is in the handwriting of said Commissioner, J. S. Wilson, derived from the knowledge I have from his handwriting in correspondence with that department myself. I know Mr. Boon received that letter, and it has been in my hands for the last four years at least, as one of his attorneys.

(McClane objects to the introduction of the annexed papers, marked A and B, on the ground that there is better evidence can be procured.)

Cross-examination.

Ques. 1. State whether you ever saw Joseph S. Wilson, whose name purports to be signed to the paper marked B, write his signature.

Ans. I never did. My knowledge of it is from letters in answer to letters of myself addressed to him as such Commissioner by me, and I judge them to be the same.

J. G. WILSON.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. G. WILSON, *for Boon.*
J. B. McCLANE.

303 STATE OF OREGON, *County of Marion:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, on the 27th day of February, 1862, between the hours of 10 o'clock a. m. and 5 o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to the said witness and then subscribed by him.

Done at Salem, the 27th day of Feb., 1862.

CHESTER N. TERRY, *Justice of Peace.*

304 B.

GENERAL LAND OFFICE, *June 2nd*, 1855.

SIR: By last mail I received your letter of the 4th April, protesting against the hearing or entertaining of farther proof ex parte in the case of the claim of John B. McClane, donation certificate No. 19, and claiming the right and priviledge of cross-interrogation and a submission of rebutting proof, &c.

In reply I would state that we have not yet received the farther proof which Mr. McClane proposes to make. When received it will be transmitted to the surveyor general of Oregon for examination, and for a full hearing after notice to all parties concerned; and upon receiving such report the further action this office in the matter will be duly communicated for the information of all parties interested.

Very respectfully, your ob't servant,

JOS. S. WILSON, *Acting Commissioner.*

JNO. D. BOON, Esq'r, *Salem, Oregon T'y.*

305 A.

This agreement, made and entered into this sixth day of September, A. D. eighteen hundred and forty-nine, by and between L. H. Judson of the first part and W. H. Wilson of the second part, both of Champoeg County, Oregon Territory, witnesseth, that the said L. H. Judson hereby does hereby convey unto the said William H. Wilson a certain portion of the claim of said L. H. Judson, known as the Salem claim, bounded and described as follows, viz: Beginning in the center of the main channel of Mill Creek, at its mouth or junction with the Willamette River; thence following up said main channel of Mill Creek in a southeasterly direction to a point nearly opposite the present dwelling of W. W. Chapman; thence N. 60° W., about sixteen chains, to a stake on the top of the right bank of the Willamette River, said stake being the original southwest corner of said mill claim, and also the northwest corner of W. H. Wilson's claim; thence from said stake down the bank of the said river to the water's edge, in the same direction; thence down the right shore of said Willamette River in a northerly direction, about ten chains, more or less, to the center of the mouth of the main channel of Mill Creek, to the place of beginning, containing ten acres of land, be the same more or less, for and in consideration of the sum of five hundred dollars, current money of Oregon Territory, which was paid to said L. H. Judson in the year A. D. eighteen hundred and forty-six, the receipt whereof is hereby acknowledged, and also in conformity with a verbal agreement made

between the parties aforesaid in the year A. D. eighteen hundred and forty-six aforesaid. The said L. H. Judson does hereby confirm unto the
306 said Wm. H. Wilson the aforesaid portion of said mill claim, together with such portion of the water of Mill Creek as is hereinafter specified, and all water priviledges or mill seats situated upon said above-described tract of ten acres of land. It is hereby declared that the mill seat heretofore improved and now occupied by the mills of Judson and McClane shall first be entitled to use water sufficient to run a saw-mill, two run of mill-stones, and the turning works heretofore built; and that W. H. Wilson shall be entitled to water, which shall be allowed to run over the dam of Judson and McClane, sufficient to run one saw-mill, and also one equal half of all the running water of Mill Creek aforesaid. Furthermore, said W. H. Willson is hereby secured in the right to build a dam across said Mill Creek at any place not higher up said creek than ten yards above the present bridge across said creek, and shall be allowed to build said dam of any height necessary to take water out of said creek for milling purposes, provided said dam shall have a dike connected therewith so as not to flow land exceeding one rod from the bed of the stream. Now in case the aforesaid W. H. Willson shall pay one third of the expence necessary to cut a canal from the Santiam River to Mill Creek, as contemplated in a certain charter granted to Willson and Judson by the legislature of Oregon, then the water of Mill Creek may, at the option of said W. H. Willson, be divided at the bend of the creek above Judson and McClane's milldam, and a millrace be cut from said bend to convey one third of the water of the said creek (leaving two
307 thirds thereof to flow into the milldam of Judson and McClane) to any part or place upon the aforesaid tract of ten acres of land. Furthermore, the said L. H. Judson hereby agrees to make unto the said W. H. Willson as good and as perfect a title to the said portion of the mill claim as he, the said L. H. Judson, shall be able to obtain from the United States government by donation or by pre-emption to the claim upon which said tract of ten acres of land is situated. For the faithful performance of all the conditions of the above contract said L. H. Judson hereby binds himself unto the said W. H. Wilson, or to his heirs or assigns, in the sum of five thousand dollars, current money of the United States.

In testimony whereof, I have hereunto set my hand and seal this sixth day of September, A. D. eighteen hundred and forty-nine, aforesaid.

L. H. JUDSON. [SEAL.]

Witness: J. S. SMITH.

Filed March 3rd, 1862.

JAS. WINSTON, *Clerk.*
W. C. Y., *Deputy.*

308 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCLANE.

B. F. Bonham, being first duly sworn on behalf of the plaintiff, deposes and says that I was an acting justice of the peace in 1857, and acting in that capacity depositions were taken before me in a matter of contest concerning the land claim in dispute between the parties. The deposition of J. L. Parrish was taken on the part of J. D. Boon on 28th day of November, 1857. There were annexed to said deposition certain papers which I supposed were forwarded to Washington City; they were marked Exhibit B and C. At the request of Boon I made copies, which I have no doubt were true and correct copies of the original papers marked as aforesaid. The papers

hereto annexed, marked B and C, I am satisfied are true copies of the original papers then so made by me.

(McClane excepts to receiving the papers in evidence as incompetent; it is not the best evidence that can be produced.)

B. F. BONHAM.

This deposition taken by agreement, to be used subject to the same conditions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. G. WILSON, *for Boon.*
J. B. McCLANE.

309 STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 27th day of February, 1862, between the hours of 10 o'clock a. m. and 5 o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing by the truth, and the said deposition was carefully read to said witness and then subscribed by him.

Done at Salem the 27th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

310 B.

This agreement, this day entered into and made between L. H. Judson, of Champoeg County, and J. L. Parrish, late of Clatsop County, witnesseth, that the said J. H. Judson hereby promises to sell and convey to said J. L. Parrish all his right, title, and interest in and to a certain piece of land lying a little east of Judson & McClane's mills, at Salem, Champoeg County, situated as follows, viz: Commencing at a stake on the north side of the stream which runs to the aforesaid mills, said stake being in the line of the west side of the street running north by compass, from the front of the Oregon Institute, distant from the NW. corner of said institute 45 chains 50 links; thence west, by compass, 3 chains; thence north, by compass, eleven chains fifty links; thence west, by compass, 13.25 chains; thence north, by compass, 19.50 chains, to a road hereafter to be laid out and opened from the grove a little north of aforesaid mills; in an easterly direction to the north line of Joseph Holman's claim; thence east, by compass, along said road 16.25 chains, to a stake in range with the west side of the above-mentioned street, running north from Oregon Institute; thence south, by compass, 31 chains, to the place of beginning, containing thirty-four 9-10 acres of land, more or less. The aforesaid Judson hereby agrees to hold said parcel of land as part of his claim, under the protection of the Oregon laws, for the exclusive benefit of said J. L. Parrish, to secure from government a title to the right of soil by purchase or otherwise; and the said J. L.

311 Parrish hereby agrees to pay to the aforesaid Judson for a quitclaim of his interest in the aforesaid premises, upon the condition above-named, the sum of two hundred dollars, Oregon currency.

(Signed) L. H. JUDSON.
J. L. PARRISH.

I hereby certify that the consideration named within has been paid in full.

L. H. JUDSON.

Filed Nov. 28th, 1857.

B. F. BONHAM, *J. P.*

312 C.

This agreement, made and entered into this sixth day of September, A. D. eighteen hundred and forty-nine, by and between L. H. Judson of the first part and W. H. Wilson of the second part, both of Champoeg County, Oregon Territory, witnesseth, that the said L. H. Judson hereby does convey unto the said William H. Willson a certain portion of the claim of said L. H. Judson, known as the Salem Mill claim, bounded and described as follows, viz: Beginning in the centre of the main channel of Mill Creek at its mouth or junction *or junction* with the Willamette River; thence following up said main channel of Mill Creek in a southeasterly direction to a point nearly opposite the present dwelling of W. W. Chapman; thence N. 60° W., about sixteen chains, to a stake on the top of the *top of the* right bank of the Willamette River, said stake being the original southwest corner of said mill claim and also the northwest corner of W. H. Willson's claim; thence from said stake down the bank of the said river to the water's edge, in the same direction; thence down the right shore of said Willamett River, in a northerly direction, about ten chains, more or less, to the centre of the mouth of the main channel of Mill Creek the place of beginning, containing ten acres of land, be the same more or less, for and in consideration of the sum of five hundred dollars, current money of Oregon Territory, which was paid to said L. H. Judson in the year A. D. eighteen hundred and forty-six, the receipt whereof is hereby
313 acknowledged, and also in conformity with a verbal agreement made between the parties aforesaid in the year A. D. eighteen hundred and forty-six aforesaid. The said L. H. Judson does hereby confirm unto the said Wm. H. Willson the aforesaid portion of said mill claim, together with such portion of the water of Mill Creek as is hereinafter specified, and all water priviledges or mill seats situated upon said above-described tract of ten acres of land. It is hereby declared that the mill seat heretofore improved and now occupied by the mills of Judson & McClane shall first be entitled to use water sufficient to run a saw-mill, two run of millstones, and the turning works heretofore built; and that W. H. Willson shall be entitled to water, which shall be allowed to run over the dam of Judson & McClane, sufficient to run one saw-mill, and also one equal half of all the remaining water of Mill Creek aforesaid. Furthermore, said W. H. Willson is hereby secured in the right to build a dam across said Mill Creek at any place not higher up said creek than ten yards above the present bridge across said creek, and shall be allowed to build said dam of any height necessary to take water out of said creek for milling purposes, provided said dam shall have a dike connected therewith, so as not to flow land exceeding one rod from the bed of the stream.

Now in case the aforesaid W. H. Willson shall pay one third of the expenses necessary to cut a canal from the Santiam River to Mill Creek, as contemplated in a certain charter granted to Willson and Judson by
314 the legislature of Oregon, then the water of Mill Creek may, at the option of said W. H. Willson, be divided at the bend of the creek above Judson and McClane's milldam, and a millrace be cut from said bend to convey one third of the water of said creek (leaving two thirds thereof to flow into the milldam of Judson & McClane) to any part or place upon the aforesaid tract of ten acres of land.

Furthermore, the said L. H. Judson hereby agrees to make unto the said W. H. Willson as good and as perfect a title to the said portion of the mill claim as he, the said L. H. Judson, shall be able to obtain from the United States government, by donation or by pre-emption to the claim upon which tract of ten acres of land is situated.

For the faithful performance of all the conditions of the above contract, said L H Judson hereby binds himself unto the said W. H. Willson, or to his

heirs or assigns, in the sum of five thousand dollars, current money of the United States.

In testimony whereof, I have hereunto set my hand and seal this sixth day of September, A. D. eighteen hundred and forty-nine, aforesaid.

L. H. JUDSON. [SEAL.]

Witness: J. S. SMITH.

Filed Nov. 28th, 1857.

B. F. BONHAM, *J. P.*

Filed Mar. 3d, 1862.

JAS. WINSTON, *Clerk.*
W. C. Y., *Deputy.*

315 Circuit court, State of Oregon, Clackamas Co.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

Ananias Aldrich, being first duly sworn on behalf of the plaintiff, deposes and says that I am fifty-eight years old, know the parties to this suit, John D. Boon and Jno. B. McClane, and know the land claim in dispute. In 1847 I came to the country and stopped with Mr. Judson, on the claim in dispute. I have resided principally in Salem since then.

Ques. 1. How long did you stay upon that claim?

Ans. I was there during the winter and spring of 1849, and made a garden for Mr. Judson; the garden was near the house on the claim in dispute, where Mr. Boon now resides. At several different times after that I was to work there at several different kinds of work, pulling down fence and making fence, and moving fence. I think in 1848, 1849, and 1850 I made garden for Mr. Judson. I do not recollect that I made garden there in 1849.

Ques. 2. State whether or not you remember the spring that McClane was in California.

Ans. I remember the spring; I do not know what year; I know that he went to California.

Ques. 3. Who made the garden that spring?

316 Ans. I cannot say that there was any garden there that spring.

Ques. 4. State who employed you to do the work mentioned, during the years 1847, 1848 and 1849.

(Objected to by McClane as incompetent.)

Ans. Mr. Judson.

Ques. 5. Who paid you for your work?

Ans. Mr. Judson paid me for my work.

Ques. 6. Who claimed the claim in dispute during those years, if you know?

(Objected to by McClane as incompetent.)

Ans. I always supposed it belonged to Mr. Judson.

Ques. 7. State how you obtained your knowledge.

(Objected to by McClane as incompetent.)

Ans. Mr. Judson was always there; seemed to have all the business to do, and claimed the claims.

Ques. 8. State after McClane returned from California whether or not you have any knowledge of Jno. McClane undertaking to get a land claim somewhere up the Willamette River. If so, state when and what.

(Objected to as leading by McClane.)

Ans. I have no such knowledge of his undertaking to get a land
317 claim up the river or anywheres else.

Ques. 9. State if after his return from California you have or have not heard him speak about going to get one or take one.

Ans. I never heard him speak about getting one.

Ques. 10. State whether or not you heard Mr. McClane say something to this effect after his return from California, that everybody would be here pretty soon, and he must see about getting a land claim. If so, what did he say?

(Objected to by McClane as leading and incompetent.)

Ans. I do not recollect of him making any such statement.

Ques. 11. Were you on the claim in dispute when McClane went to California in 1848?

Ans. I was stopping then with Mr. Judson on the claim.

Ques. 12. State whether or not Mr. McClane left any of his own property there when he went to California.

Ans. He never left any to my knowledge.

Cross-examination.

Ques. 13. What time in the fall of 1847 did you first come to
318 Salem?

Ans. I cannot state. It was in the spring of 1847 I came to Salem. I think it was that spring I did the work in the garden.

Ques. 14. What year did you cross the plains?

Ans. I crossed the plains in 1847.

Ques. 15. What time in 1847 did you leave the Western States?

Ans. It was in the latter part of the winter or spring.

Ques. 16. How long were you crossing the plains?

Ans. I could not state near the time.

Ques. 17. Was it not late in the fall of 1847 when you reached the settlements in Oregon?

Ans. It was not.

Ques. 18. Are you as sure of the truth of this last answer as of anything else you have certified?

Ans. I am sure.

Ques. 19. Are you certain that at any time after 1847 you made a garden for Mr. Judson on the claim in dispute?

Ans. I am sure.

Ques. 20. Was it in 1849?

Ans. I am not sure.

319 Ques. 21. You have already stated that you do not know that there was any garden on the claim that spring that McClane came from California. Was it before or after his return that you made a garden for Mr. Judson?

Ans. I think it was before he went away, and also after his return.

Ques. 22. Did you not make garden there in 1848?

Ans. I cannot say certain to any year. I made garden on the claim and it was for Mr. Judson.

Ques. 23. Do you not know that Mr. Judson was not living on that claim in 1850?

Ans. I do not.

Ques. 24. Did you not in crossing the plains travel part of the time in the same company with Mr. Thomas Carter, of Portland.

Ans. I would not state positive whether I did or not.

Ques. 25. Do you not remember of seeing Mr. Thomas Carter on the plains in 1847?

Ans. I do not.

Ques. 26. Have you not frequently stopped over night at Mr.
320 Thomas Carter's, in Portland, while sick with the asthma?

Ans. I never stopped a night with him to my recollection, at his house or anywheres else.

Ques. 27. Are you not the Mr. Aldrich who at various times saws wood for W. R. Smith & Co., in the town of Salem?

Ans. To my knowledge, I never sawed a stick of wood for him; I might sawed wood for the company.

Ques. 28. Were you not sick with the asthma on the plains in 1847?

Ans. I was.

Ques. 29. Did you not travel much of the time on foot without having any provisions, except such as was given you by your fellow-travellers?

Ans. I did.

Examination in chief resumed.

Ques. 30. Do you remember of travelling on the plains with James Ross?

Ans. I do not recollect.

his
ANANIAS ⋈ ALDRICH.
mark.

This deposition taken by agreement, to be used to the same conditions as contained in the agreement to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

321 State of Oregon, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 21st day of February, 1862, between the hours of ten o'clock a. m. and four o'clock p. m., in pursuance of an adjournment that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him with his mark.

Dated at Salem, February 21st, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Filed Mar. 3d, 1862.

JAS. WINSTON, *Clerk.*
W. C. Y. *Deputy.*

322 Circuit court, State of Oregon, Clackamas County.

Jno. D. Boon
vs.
Jno. B. McClane.

A. R. Stoughton, being first duly sworn on behalf of plaintiff, deposes and says that I am acquainted with the parties in the action, John B. McClane and John D. Boon. I knew John B. McClane in 1843, and John D. Boon in October, 1848.

Ques. 1. State whether you are acquainted with the land claim in dispute between John B. McClane and Jno. D. Boon.

Ans. I am acquainted with it, and have been since I have been in the country, and knew it as the mission claim in 1845. There was a flouring mill on the claim in 1845 and 1846, known as the Mission Claim and Mills. I don't know whether Force owned it or not.

Ques. 2. State how that claim is known or called.

Ans. It was known as the mission claim, or North Salem.

Ques. 3. State who resided upon and claimed that claim previous to 1850?

Ans. L. H. Judson claimed it for about three years previous to this time, and he resided upon it most of the time.

Ques. 4. How do you know L. H. Judson claimed the claim previous
323 to 1850?

Ans. I know it by having it from Judson previous to McClane's return from California.

Ques. 5. State after McClane's return from California what did Mr. Judson say, if anything, in reference to claiming the claim.

(Objected to as leading.)

Ans. About the time McClane returned I was present at a conversation with W. W. Chapman, L. H. Judson, and myself. This conversation was had on a saw log at the mills on the mission claim. Judson said that McClane had nothing to do with the land claim, but the mills he owned one half. Mr. McClane could only object to his, Chapman's, being partner in the mill, not in the claim. Judson goes off to his work; he said if Mr. Chapman or any one doubted McClane having no interest in the claim he could go to Oregon City and examine the records in the office.

Ques. 6. If anything, state what was said by Judson in this conversation about an arrangement between him and McClane about another land claim.

(Objected to as leading and irrelevant.)

Ans. I could not say whether this conversation was had at the time we were together on the log or some other day. Mr. Judson said to McClane if he would take a timbered claim up the Willamette River he could have an interest in the mission claim, or up the Santiam where the water was to be
turned into Mill Creek, and when McClane would get a title to either
324 of the timbered claims, he could have an interest in the mission claim.

Ques. 7. What interest was Judson to have in the claim that McClane would perfect a title to, and what interest was McClane to have in the mission claim, if you know or heard?

(Objected to as leading and irrelevant.)

Ans. I took it from the conversation that they were to divide the claim equally. He said, pointedly, that the up-river claim was to be for the use of the mill.

Ques. 8. State, if you know, at that time what interest or connection W. W. Chapman had in the mill or claim in dispute.

Ans. One third in mill and claim.

Ques. 9. State what led to the conversation of above with Judson, Chapman, and yourself.

Ans. It was about a difficulty that happened in 1848. McClane was unwilling that Chapman should be a partner.

Ques. 10. Where was Mr. McClane at the time of the conversation referred to above?

Ans. I think he was in the store; cannot say positively. The store was in the north front room where Mr. Boon now resides.

Ques. 11. Where did Mr. Judson and his family then reside?

Ans. They resided, before Mr. McClane returned, in the room back of the store. After he returned they moved up stairs.

Ques. 12. Where was Mr. Boon and his family residing?

Ans. They were residing on Boon's Island, a part of this claim, as I supposed, in a slab shanty.

325 Ques. 13. State, if you know, at this time whether McClane was a married man or not.

Ans. I think he was a single man.

Ques. 14. To your knowledge has McClane ever perfected title, in any way, to such a claim as was spoken of by Judson in that conversation?

(Objected to as incompetent and irrelevant.)

Ans. He has not.

Ques. 15. Up to the time of this conversation whose land claim was the claim in dispute said to to be, if you know?

(Objected to, irrelevant and incompetent.)

Ans. Mr. Judson.

Ques. 16. State, if you know, whose afterwards it became.

(Objected to as improper.)

Ans. In 1850 or 1851, I should say about eighteen months after McClane returned from California, McClane went to Clatsop, at the mouth of the Columbia River, and made a settlement with Mr. Judson and dissolved partnership. Mr. Judson took the Clatsop property; Mr. McClane took the mission claim, the one in dispute, and squared off. I had these facts from McClane the morning after his return from Clatsop.

Ques. 17. When did McClane go to California refered to above?

Ans. First day of October, 1848; and came back the first of April or the first of May, 1849.

326 Ques. 18. Where has Mr. Boon and family resided since you first knew them?

Ans Part of the time in his shanty; part of the time in a new house he built on the island; and a part of the time on a land claim in the hills, and the rest of the time in the house where he now lives.

Ques. 19. State, if in 1849 and afterwards, if you know of Mr. Boon's having and making extensive improvements on the island and on the claim in dispute; and what were they?

Ans. I have known Mr. Boon putting up quite a number of buildings on the claim—some seven or eight. The most of the buildings were built about the year 1852 or 1853. These buildings were all built on Boon's Island, with the exception of a barn on the other side of the island.

Ques. 20. What were the value of these buildings in 1852 or 1853?

Ans. About four thousand dollars.

Cross-examination.

Ques. 21. When did Mr. Boon live on the claim in the hills, and for what length of time?

Ans. I think he wintered there two winters—it is guess-work—about 1848 and 1849.

Ques. 22. How do you know that W. W. Chapman owned a third of the mill and claim?

327 Ans. I only have it from Mr. Chapman and Judson. I think it was a third; I cannot say positively.

Ques. 22. Who built the slab shanty?

Ans. I do not know; but Riley, Kendall, and Boon had the mill rented one winter, and think it was built that winter. I think it was built by Boon, in 1846 or 1847.

Ques. 23. Do you know what title, if any, Mr. Boon claimed to have to the lots he occupied on what is commonly called Boon's Island prior to 1853?

Ans. He bought them from Mr. Judson. He never knew of any one else selling lots until after the survey of the town of N. Salem was made; then McClane sold lots.

Ques. 24. Do you know how long Mr. Judson had been living in Clatsop before the settlement refered to?

Ans. From eighteen months to two years.

Ques. 25. Did not Mr. Judson, during the part of the years prior to 1850, live on the South Salem claim with his family?

Ans. I think it was in 1845 I visited his house in South Salem.

A. R. STOUGHTON.

328 We agree that this deposition may be used in evidence on the trial and hearing of either and of both the causes now pending in circuit court for Clackamas County, in one of which J. B. McClane is plaintiff and J. D. Boon def't, action at law, and in the other J. D. Boon is complainant and J. B. McClane is defendant, in chancery, subject to all objections as to competency and relevancy of testimony.

Feb. 10th, 1862.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for J. D. Boon.*

STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 10th day of February, 1862, at ten o'clock, in pursuance of adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Given under my hand this 10th day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Filed Mar. 3rd, 1862.

JAS. WINSTON, *Clerk.*
W. W. J., *Deputy.*

329 A.

Know all men by these presents that we, L. H. Judson and J. B. McClane, of North Salem, Marion County, Oregon Territory, are held and firmly bound unto J. L. Ross, of Marion County aforesaid, in the sum of five thousand dollars, current money of the United States, for the payment of which we bind ourselves, our heirs, executors, and assigns, firmly by these presents.

In testimony whereof, we have hereunto set our hands and affixed our seals this thirty-first day of May, A. D. eighteen hundred and fifty.

Now, know ye that the condition of the above obligation is such that whereas the above-bounden L. H. Judson and J. B. McClane, for and in consideration of the sum of two hundred dollars in hand paid, the receipt whereof is hereby acknowledged, have this day sold and transfered unto the said J. L. Ross lot No. 5 and No. 6, in block No. 24, in the town of North Salem, as recorded in the office of the county clerk of Marion County: Now, if the above-bounden L. H. Judson and J. B. McClane shall protect, warrant, and defend said lots No. 5 and No. 6, in block No. 24 aforesaid, against all claims to said parcel of land, excepting the claim of the government of the United States, and whenever said L. H. Judson and J. B. McClane shall obtain from the United States government, either by donation or purchase, a title to the half section of land upon which lots are situated, if said L. H. Judson and J. B. McClane shall make and deliver unto the said J. L. Ross as good and as perfect a title to the aforesaid lots as they shall be able to obtain from said government of the United States, then and in that case the above bond shall be void and of no effect; otherwise, it shall remain in full force and virtue.

Dated at North Salem, the thirty-first day of May, A. D. eighteen hundred and fifty.

JUDSON & McCLANE,
By J. B. McCLANE.

330 Circuit court, State of Oregon, Clackamas County.

JNO. D. BOON
vs.
JNO. B. MCCLANE.

James Ross, being first duly sworn on behalf of the plaintiff, deposes and says that I am acquainted with the parties to this suit, John D. Boon and Jno. B. McClane, and know the claim in dispute. I am forty-five years old. Have been acquainted with McClane since 1847, and with Boon since 1848; and the claim in dispute since said date; and have resided in and near Salem most of that time.

Ques. 1. State if you know of McClane's going to California and returning.

Ans. I do.

Ques. 2. State if you had any conversation with Jno. B. McClane upon or after his immediate return from California, in the spring of 1849, in reference of his taking or holding a land claim in Oregon; and if you had such, state what it was and when and all you know about it.

(Objected to by McClane as leading.)

Ans. He and Mr. Judson were holding the claim in dispute. McClane told told me so; that he, McClane, wanted to go up the river to take a timbered claim. He, McClane, said Judson would had the claim in dispute. McClane thought of taking a claim up the river some place, and whenever they got deeds they would divide the claims. He, McClane, wanted to know if I did not want one. This conversation was had after his return from California.

331 Ques. 3. At the time of this conversation was McClane a married man or no?

Ans. He was, I think, a single man.

Ques. 4. Are you interested in the claim in dispute in any way?

Ans. I have two lots; they were bought the last of May, 1850. I have a bond for the lots given by Judson & McClane, (which is attached to this deposition and marked A.)

Ques. 5. At the time of this conversation refered to where was L. H. Judson and family residing?

Ans. In the house where Mr. Boon now resides.

Cross-examination.

Ques. 6. Where did this conversation with Mr. McClane take place?

Ans. At the mill. Mr. McClane, I think, was engaged in the milling business at that time.

Ques. 7. Are you able to remember with distinctness, and report with accuracy, what Mr. McClane may have said to you in a casual conversation so long ago?

Ans. I think I do; I think I am sure.

Ques. 8. Are you certain of it?

Ans. If my recollection serves me I am.

Ques. 9. Was not Mr. McClane keeping the store on said claim at
332 the time of your alleged conversation with him?

Ans. I think not.

Ques. 10. I think you stated that your conversation with McClane occurred about the first of June, 1849.

Ans. It might have been May and may have been the last of April. I cannot state the time exactly.

J. S. ROSS.

This deposition taken by agreement, to be used subject to the same condi-

tions as contained in the agreement appended to the deposition of Samuel Penter, notice being waived.

J. S. SMITH, *Att'y for McClane.*
J. G. WILSON, *for Boon.*

STATE OF OREGON, *County of Marion, ss:*

I, Chester N. Terry, justice of the peace in and for the said county, do hereby certify that the above deposition was taken before me and reduced to writing by myself, at Salem, in said county, on the 21st day of February, 1862, between the hours of ten o'clock a. m. and four o'clock p. m., in pursuance of an adjournment; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Dated at Salem, the 21st day of February, 1862.

CHESTER N. TERRY, *Justice of the Peace.*

Filed Mar. 3, 1862.

JAS. WINSTON, *Clerk.*
W. C. J., *Deputy.*

333 To John B. McClane, or his attorney of record:

You are hereby notified that on the seventeenth day of February, 1862, at 10 o'clock a. m., at the office of and before Shubrick Norris, clerk of the circuit court of the State of Oregon for Multnomah County, at Portland, Oregon, I shall proceed to take the depositions of William W. Chapman and others as witnesses, to be used in evidence upon the hearing of the cause now pending in the circuit court of Oregon for Clackamas County, wherein you are defendant and myself complainant, on my part, said witness being out of said Clackamas County and more than twenty miles from the place of holding said court, to wit, Oregon City.

Salem, Oregon, Feb. 4th, 1862.

JOHN D. BOON.

I hereby acknowledge due service of a copy of the above notice, in Portland, Oregon, this 13th day February, A. D. 1862.

W. W. PAGE, *of Attorneys for McClane.*

It is agreed that the deposition shall be taken at 4 o'clock p. m. This deposition to be used only in the suit equity, without waiver at trial to objections which may be made to the sufficiency, competency, and relevancy.

WILLIAMS & GIBBS, *Sol's for J. D. Boon.*
W. W. PAGE, *of Att'y for J. B. McClane.*

334 In the circuit court of the State of Oregon for Clackamas County, in equity.

JOHN D. BOON
vs.
JOHN B. MCCLANE.

Deposition taken before Shubrick Norris, clerk of the circuit court of the State of Oregon for Multnomah County, A. C. Gibbs appearing for complainant and W. W. Page for defendant. W. W. Chapman being first duly sworn on the part of the complainant, answers as follows:

Int'ry 1st. Are you acquainted with the parties to this suit?

Ans. Yes.

Int'ry 2nd. State whether or not you know the land claim sometimes called the North Salem claim, in Marion County, Oregon.

Ans. Yes, I know the claim, but do not know its precise boundaries.

Int'ry 3d. State what knowledge you have of its boundaries and of its being claimed by any one during the time of your residence in Oregon, giving the names of persons and dates as fully as you can.

(Objected to by defendant's att'y for the following reasons: first, for that it calls for evidence as to claimants of the land, which is a matter of record, and the record evidence should be produced; second, that it calls for the boundaries of land, which is a matter of record, and the record evidence should be produced; third, it is irrelevant and immaterial.)

Ans. The claim lay on the Willamette and Mill Creek, principally
335 below Mill Creek, and I am inclined to think it is entirely below Mill Creek, though my recollection upon this point is very imperfect. I think it joins the claim of Parrish eastwardly. Who the other adjoining claimants were I cannot now state. On the south was the Salem or Dr. W. H. Wilson's claim. I have an impression that there was either a reservation or a small claim of some description between the Salem claim and the claim in controversy. What it was and its extent I am now unable to say. I rather think Dr. Wilson was interested in it some way. L. H. Judson, I think, was the claimant of the claim in controversy when I first knew it, which was in the winter of 1847 or spring of 1848. I knew the claim from the winter of 1847 and 1848 until the summer of 1849. I resided at Salem from the spring of 1848 until the fall of 1849.

Int'ry 4. State whether or not during your residence at Salem you had any interest in any property upon said claim. If yes, what property and to what extent?

(Objected by defendant's att'y, on the grounds that it is not the best evidence in that the interest in real estate should be in writing and that produced, and because immaterial and irrelevant.)

Answer. In the spring or summer of 1849—in the spring, I think—I purchased one third interest from L. H. Judson in the mills and claim upon which they were situated. Whether that extended to the whole amount of land claimed by Judson or not I cannot be positive.

336 Int'ry 5. State whether or not you expected to derive title to your interest in said property direct from the United States or through some other person; and if through some other person, whom?

(Objected to by defendant's att'y as immaterial, leading, and irrelevant, and because the same should be proven by written evidence.)

Answer. I think the contract was to the effect that L. H. Judson should obtain title, but as no law of Congress had passed for title little was said on that subject. I looked to Judson, the claim holder, for protection in my right.

Intr'y 6. State whether or not McClane was interested with you in said property at the time; and if yes, state whether or not his interest and relation with said Judson was different from that of your own.

(Objected to by defendant's att'y as incompetent, irrelevant, immaterial, and not the best evidence.)

Answer. When I went to Judson to make the purchase he showed me the contract between him and McClane in reference to the same property, or at all events, he informed me what the nature of the contract was, and I think they had an equal interest or were to have, if, as Judson said, McClane should comply with the terms of the contract. Whether he contracted with me in the name of Judson & McClane or in his own name I am now unable to state with certainty.

Int'ry 7. State whether or not at the time there was an arrange-
337 ment by which you and McClane were to hold a land claim at some other place.

Answer. It either appeared from what Judson said or from the contract between him and McClane that McClane was to have taken a claim elsewhere for timber, and it was urged by Judson that McClane had failed to do it, and I think that I was obligated to do that thing.

Int'ry 8. How was this claim held at that time?

(Objected to by defendant's att'y as immaterial and irrelevant.)

Ans. It was held under the laws of the provisional government, as well as I can now recollect.

Int'ry 9. When did you first learn that McClane pretended to hold the claim in his own right?

(Objected to by defendant's att'y as immaterial, incompetent, and irrelevant.)

Answer. I cannot state precisely when I first heard it, but it was not until I sold out my interest in it, and I think it was not until after the passage of the donation law, but it may have been before.

Cross-examination by def't.

Int'ry 10. Upon what is your knowledge in answer to interrogatory 3, direct examination, based?

Ans. Referring to the claim my statement was based upon these
338 facts: I saw Mr. Judson residing upon the claim with his family. He continued to reside there from my first acquaintance with the place until some time after I moved from Salem. He professed to be the claimant, and I heard no one dispute it, except as I have before explained. I think I saw the contract transferring the claim to him. I do not know whether I ever saw the provisional government record or not.

Int'ry 11. State whether or not the house in which Judson lived was built by and owned by John B. McClane.

Answer. I do not know that it was. It was built before I came to the country, and my understanding was, I think, that the house had been built by the mission as a part of the mission improvements at the mill.

Int'ry 12. Was the contract which you have referred to, transferring the land in question to Judson, in writing or not?

Answer. My impression is that it was, and I think I have seen it since I testified on this subject before.

Int'ry 13. Was McClane present at the conversation you have referred to between yourself and Judson in regard to the purchase?

Ans. He was not.

Int'ry 14. Was the purchase by you of Judson in writing?

339 Answer. I think it was; am pretty sure it was.

Int'ry 15. Do you not know that McClane claimed the land in controversy?

Answer. I think I knew before September, 1848, that he had or claimed some interest there. The particular nature and extent of that interest I did not know until I proposed to purchase an interest in it. The saw-mill and grist-mill upon the property I purchased were the main objects of my inquiries. When I made the proposition to purchase I then saw a memorandum or note of the contract between McClane & Judson. McClane was then in California.

Int'ry 16. State whether or not McClane objected to your purchase of Judson.

Answer. McClane returned some time in the spring or summer of 1849, as I think, when I was superintending and carrying on the mills personally. He remained some little time without saying anything, and I supposed it was going on right or to his satisfaction. One or two difficulties occurred between us, when we came to an open rupture. He took a bold stand against my rights under the purchase. We then referred it to arbitrators, I think,

of his own selection. They awarded me the rights I had purchased. He declined to abide by the arbitrators. The matter continued pretty much in this condition, when he purchased me out and took an assignment of
340 my contract, so ending the matter between him and me. He remarked, on purchasing my interest, that he now owned two thirds of the property in which we had been purchasers or interested.

Int'ry 17. State whether or not McClane objected to the right of Judson to sell to you.

Answer. I think he did at the time we had the open rupture. I should correct what I said of McClane's declarations when he purchased my interest. He said that he had owned one half, and now owned a third more, and Mr. Judson had not much more to talk about, or something to that effect.

Int'ry 18. In your direct examination were not your statement in regard to the relation and interest of McClane and Judson, and Judson and yourself, based solely and entirely upon the contents of the written agreement you have refered to?

Answer. My relations with the parties were based on the written instruments. My impression is that Judson made many statements and explanations in regard to the contract between himself and McClane. I do not know whether they were in the written contract or not. These statements were at the time I was negotiating for the purchase. McClane was then in Cal.

Int'ry 19. State whether or not what was known as the mill prop-
341 erty was not distinct from the land claim, and so understood.

Answer. The mill property may have included less than the whole claim of Judson, and for aught that I can now state it may have been seperate from that. The written contract between Judson and myself was handed over to McClane, and I have not seen it since that I recollect of.

Direct examination resumed.

Int'ry. In whose possession was the contract or bill of sale refered to by you as having been seen by you since your first examination? and did it purport to be a copy or the original?

Int'ry. If I am not mistaken, I saw it in the possession of one of the parties, either plaintiff or defendant—it may have been one of their attorneys—at the time of the holding of the circuit court in Clackamas County, at which there was a trial between McClane and Boon. It may have been a copy.

Int'ry. Did the first difficulty between you and McClane arise upon his disputing Judson's right to sell you an interest in the mill property?

Answer. I think not, but it may have been incidentally alluded to.

W. W. CHAPMAN.

342 STATE OF OREGON, *Multnomah County, ss:*

I, Shubrick Norris, clerk of the circuit court of the State of Oregon for Multnomah County, do hereby certify that the above deposition was taken before me, and reduced to writing by myself, at my office, in Portland, in said county, on the 17th day of February, 1862, at 4 o'clock, in pursuance of notice and agreement annexed; that the above-named witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness and then subscribed by him.

Witness my hand and seal of office affixed this 18th day of February, A. D. 1862.

SHUBRICK NORRIS, *Clerk.*

Filed Mar. 3rd, 1862. JAS. WINSTON, *Clerk.*

Clerk's fees for copying 680 folios, at 25 c'ts. $170.

343 I, Lucien Heath, clerk of the supreme court of the State of Oregon, do hereby certify that the following depositions, exhibits, and matters of proof are now on file in my office, and that the foregoing is a true, complete, and correct transcript of the same, all of which were used upon the trial of said cause of John D. Boon vs. John B. McClane, to wit: The depositions of N. T. Caton, Zachariah Pollard, Henry Hawkins, Nancy Judson, Thos. Cox, J. M. Garrison, Samuel Parker, W. H. Judson, J. L. Parrish, J. G. Wilson, B. F. Bonham, Ananias Aldrich, A. R. Stoughton, J. S. Ross, W. W. Chapman, Aaron Purdy, John Ford, J. B. Keizer, L. F. Grover, W. H. Rector, L. Westlacott, C. J. Durbin, Samuel Parker, D. Leslie, F. R. Smith, P. C. Keizer, V. K. Pringle, James Force, W. P. Pugh, John Force, L. B. Judson, W. Hauxhurst, and L. H. Judson, together with notification No. 45, affidavits of J. B. McClane, W. H. Wilson, J. L. Parrish, donation certificate No. 19, patent and certificate of record, agreements of J. B. McClane and H. C. McClane and Judson & McClane with W. W. Chapman by L. H. Judson, and Jud-
344 son with J. L. Parrish, with affidavits of T. J. McCoran, J. R. Ralston, H. Burns, Wm. J. Herren, J. D. Boon, W. J. Herren, David Presley, Aaron Purdy, Zachariah Pollard, also Exhibits A, B, C, B, A; that there are no other deposition or exhibits on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the supreme court of the State of Oregon this 3d day of November, A. D. 1863.

S. HEATH, *Clerk*,
By R. WILLIAMS, *Deputy*.

345 In the Supreme Court of the United States.

JOHN D. BOON, appellee,
vs.
JOHN A. MCCLANE, appellant.

It is hereby stipulated by and between said parties, by their attornies, that no proceedings shall be had in the said cause in said Supreme Court before the 1st day of March, 1865, or, if desired by the appellant, before the 1st day of August, 1865, unless before that time the term of said court shall be ended, it being understood that said cause is not to go over the next term of said court. It is further stipulated and agreed that the attorneys of John D. Boon, lately deceased, shall cause to be entered the appearance of Martha D. Boon and John S. Boon, administrators of John D. Boon, dec'd, in said suit, and waived service of process necessary to bring them into court. And it is further agreed that this stipulation, or copy thereof, shall be filed in said court.

Salem, Oregon, October 13th, 1864.

WILLIAMS & KELLY, *Att'ys for Appellee.*
STRONG, PAGE & SMITH, *Attorneys for Appellant.*

Filed February 24, 1865.